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OF THE

SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY BY

SIR JOHN MACDONELL, C.B., LL.D.,

AND

EDWARD MANSON, Esq.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῇ καὶ τὸ χρήσιμον."—Arist. *Pol.* II. 1.

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THE RIGHT HON. R. B. HALDANE, K.C., M.P.

In this number of the Journal appears the portrait of a distinguished lawyer, statesman, and author well known to our readers. Mr. Haldane's career at the Bar has been comparatively short; but it has been one of altogether exceptional success. He quickly made his way to the front; and at an age when even able advocates are only beginning to obtain recognition he had acquired a foremost position. At the present time he is retained in every case of the first importance in the House of Lords or Privy Council. So far that is, it may be said, only a repetition of many a story to be found in the Lives of the Chancellors or Chief Justices. But Mr. Haldane has meantime as a politician, and, what is very different, as a political teacher, won a unique position in the House of Commons and the country. Whatever may be thought of his opinions, he discusses, it will be owned, public questions on a higher plane, with a wider range of ideas, and a far larger store of knowledge, than the ordinary politician. He has aspirations for the welfare of the nation and ideals as to the Empire which are outside and above official programmes. Nor is this all. Mr. Haldane has, perhaps as much as any one, done something to take away an ancient reproach from English lawyers—a reproach as old as the time of Bolingbroke, who, in his often-cited criticism of members of the legal profession, depicts them as they are, and as they might and ought to be, and adds that "there will be none such any more" as he would fain see "till men find leisure and encouragement to prepare themselves for the exercise of this profession by climbing up to the *vantage* ground—so my Lord Bacon calls it—of science, instead of grovelling all their lives below, in a mean but gainful application to all the little arts of chicane. Till this happens, the profession will scarce deserve to be ranked among the learned professions; and whenever it happens, one of the vantage grounds to which men must climb is metaphysical, and the other historical knowledge." It would be hard to name, in our time, any one who, pursuing the practice of the law with signal success, has so clearly risen to those vantage grounds as the translator of Schopenhauer, the author of the Life of Adam Smith and of *The Pathway to Reality*, and the expositor of Hegel.

THE ANTWERP CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION, 1903.

[*Contributed by* MR. JUSTICE KENNEDY.]

Success of the Meeting.—The twenty-first Conference of the International Law Association, which was held at Antwerp at the end of September last, under the presidency of M. Auguste Beernaert, Minister of State and President of the Belgian Association for the Unification of Maritime Law, proved, in some respects at any rate, a worthy successor of its latest forerunners at Buffalo, Rouen, and Glasgow. Nothing could be better in point of dignity and genial courtesy than the reception which was given on the opening day by the Burgomaster and aldermen of the city to the numerous members of the Association who had assembled to attend the Conference. The duties of the hon. secretaries, Mr. Alexander and Mr. George Phillimore, were much lightened by the excellent discharge of the duties of chairman on the part of the distinguished President of the Conference, and by the zeal and tact of the local members of the Association, and especially, amongst them, of M. Charles Lejeune, M. Louis Franck, and M. Charles Bauss, "Batonnier de l'Ordre des Avocats" at Antwerp. The entertainment of the visitors by the municipal authorities on board their steam-yacht on the opening day, and by the Belgian Association of Maritime Law at the banquet with which the Conference ended, and the hospitality of private citizens during its continuance, gave great pleasure to all. But it is upon the work done that the real value of such a gathering depends; and if the Antwerp Conference be so tested, there will be found, I think, no just ground for dissatisfaction with the results. To some of the principal topics of discussion I shall refer presently.

Tone and Attitude of the Speakers.—But in two points the general character of the proceedings deserves notice. One was the absence in the attitude of the speakers—and they represented many nationalities—of any trace of national prejudice. The tone throughout was genuinely international. No one appeared to try to insist upon the adoption of a view merely because it was the established or the prevalent view in the legal or the commercial world of his own country. The law of Germany in regard to limited

companies received sharp criticism from a Berlin lawyer. It is, indeed, not the least of the merits of conferences of this kind, wherever jurists and men of business from many lands meet to discuss matters of common interest with the useful purpose of bringing into greater harmony, if not to unification, the diverse institutions of law and commerce which help race and language to divide civilised nations, that by the friendly interchange of serious thought they tend continually to lessen national prejudices, and to widen the area of faith in the practicability of settling even grave international disputes satisfactorily without war by frank and rational discussion.

The other point of a general character was one which is gratifying to an English lawyer. Throughout the discussions there was apparent in the speeches of the continental members something more than a willingness—almost a desire—on questions touching commercial law, to be persuaded of the correctness of the English view, and to give special weight to its pronouncements. This tone appears the more remarkable when one remembers that the system of law and of legal procedure in the countries which form Western and Southern Europe is, broadly speaking, homogeneous and different from ours. The same feeling found indirect expression in the sympathetic reception which was given by the Conference to Mr. Justice Phillimore's paper (which will be referred to later), as to the desirability of the British Government taking an active part in the Legal Conference at The Hague on Private International Law and in a conference for securing unity of Maritime Law, and to the motion which followed the reading of that paper.

On topics bearing upon the unification of law, and also on subjects involving a comparison of existing laws, several papers were read or presented to the Conference. An interesting paper read by Mr. Elmslie, which raised or suggested more than one rather abstruse and intricate question of principle and practice in the Law of General Average, was referred to a committee for consideration; and so were also papers read by Mr. W. F. Hamilton K.C., Dr. Schirrmeister, and others, as to the laws relating to limited companies in England, Germany, France, Italy, and Belgium. It would, therefore, appear to be of little advantage, in regard to the work of the Conference, to refer to them further here, and I shall confine my few remarks to three other subjects which were before the Conference, and which may be of interest to some of the readers of this Journal.

Execution of Foreign Judgments.—The first of these three is the question of the execution of foreign judgments. On this topic, which had been brought under discussion at previous Conferences of the Association, a very interesting Report was presented by M. Gaston de Laval, of Brussels, Counsel to the British Legation. It was a Report which that gentleman had drawn up on behalf of the Belgian section of the committee appointed by the Association to consider this important matter. It contained an elaborate "Projet de Convention" between Great Britain and Belgium. The "Projet"

is prefaced by an explanatory statement which sets out clearly but, as I venture to think, in a too pessimistic spirit, the obstacles to a convention, and the limitations which are created by the differences in the legal systems of the two countries, and from which the framers of the Franco-Belgian Convention of 1899 were free. One difficulty, which the Report treats as especially serious, appears to arise from our practice in Chambers under Order XIV. In M. de Laval's judgment, a "Tribunal d'exequatur" would violate the Belgian Constitution if it gave effect to a judgment which had not been pronounced in open Court. A similar constitutional difficulty is stated to arise as to giving effect to any judgment which does not set forth in writing the grounds upon which it is based. According to Art. 97 of the Belgian Constitution, "Tout jugement est motivé. Il est prononcé en audience publique."

If such are really samples of the gravest hindrances to the scheme of an Anglo-Belgian Convention, the way to its accomplishment does not appear necessarily to be hard. I am not aware of anything which would prevent any English Judge, if a successful plaintiff intimated that he wished to enforce a judgment in Belgium, from directing that the judgment, if given in Chambers, should afterwards be formally pronounced in open Court, or from ordering that a short statement of the grounds of his judgment, whether given in Chambers or in open Court, should appear upon the face of it; as, for example, in the case of an action on a bill of exchange, that it was proved that the plaintiff was a holder for value, and that the defendant was the acceptor and had failed to pay it after it had matured. If there be any difficulty as to either of these things under our Rules of Court as they stand, the necessary addition could easily be made by the Rule Committee.

A further, but, in the opinion of M. de Laval, less formidable, difficulty might arise from a difference between the rules of English and Belgian procedure in regard to the service of the initial proceedings in an action—the writ or citation to appear. He comments in an amusing way on the stringency of our requirements in regard to personal service:—

"Au delà de la Manche il faut sauf quelques rarissimes exceptions le 'personal service'; le défendeur doit sous peine de nullité recevoir en personne sa citation et il y a même sur la façon d' empêcher cette 'remise' à personne toute une littérature qui oblige les porteurs de citation à des ruses d'Apaches. Chez nous comme en France il en est tout autrement. . . ."

M. de Laval next proceeds to refer to differences which would require adjustment if a convention was intended to embrace judgments other than judgments for the recovery of money and costs; as, however, the convention proposed in the Report is framed only to embrace such judgments, it would serve no useful purpose to refer to them. The "Projet de Convention" which follows this preface appears to be skilfully drawn, and to afford an excellent basis for an agreement; but, no doubt, some clauses would require

careful consideration before they were definitely accepted; such, *e.g.*, as the provision in Art. 2, which makes the competence of the "Tribunal de Jugement" conditional upon the defendant having, at the commencement of the action an effective or elected domicil or an habitual residence within the jurisdiction of that tribunal. The framers of the "Projet" are not prepared to allow the competence of a tribunal of the country "où le défendeur n'aurait été que momentanément présent." And it is noteworthy that, as is made plain by some remarks by M. de Laval which follow the text of the "Projet," they did not intend to allow the "Tribunal d'exequatur" to admit a defence that the foreign judgment was obtained by fraud. It is now settled law with us that the defendant in an action on a foreign judgment may show that the judgment was obtained by fraud, and, if it be necessary for that purpose, may have questions re-tried which were adjudicated upon by the foreign Court. I venture to think that if the two Governments should officially consider the terms of an Anglo-Belgian Convention as to the execution in one country of judgments pronounced in the other, it may be worth while to consider whether a concession might not properly be made to the Belgian view on this point. There is, in my opinion, something at all events to be said in support of M. de Laval's preference for leaving the defendant to apply to the tribunal which pronounced the judgment against him for an annulment or reversal of it, on the ground that it has been obtained by fraud; provided always that the laws of the country of that tribunal make this method of redress available to the defendant upon the discovery by him of the fraud by means of which the tribunal has been led astray.

Looking at this Report as a whole, one is led to judge, on the one hand, that a workable convention between England and Belgium is by no means unattainable, and, on the other hand, that it could not be concluded without considerable care and skill, and a real willingness on both sides to make reasonable concessions. Certainly it ought to be concluded. It seems a matter of just reproach to modern civilisation that the attempt to enforce in one country of Western Europe a judgment obtained in another, which possesses a system of law that is justly and regularly administered, should be attended by the uncertainties and risks which at present exist. Moreover, the conclusion of a convention between England and Belgium would mean a greater gain to us than its direct and immediate consequences. For such a convention would serve as a very useful model for a convention of the same character with France, whose legislation is derived from the same source as that of Belgium and which has the same judicial organisation, and also, though not, perhaps, to an equal extent, for conventions with other Continental States. But no real progress can be hoped for in this matter unless the Governments of the two countries heartily co-operate.

Great Britain's Attitude towards International Conferences.—This brings me to the notice of the paper read at the Antwerp Conference by Mr.

Justice Phillimore, the title of which has been already given. For a long time past, we, as a nation, have shown no disposition to further the unification of the law. Considering the greatness of its interest for us, one finds it hard to say why. Mr. Justice Phillimore fully and clearly described our lost opportunities. He dwelt strongly upon the desirability of a different course of national action. Three important international conferences have been held at The Hague in recent years—in 1893, 1894, and 1900. In none of these was Great Britain represented. These conferences, Mr. Justice Phillimore pointed out, have borne fruit in a series of conventions between the nations represented, which dealt with the reciprocal execution of foreign judgments, and which, whilst recognising the diversity of national laws as to marriage (both in respect of capacity to contract, and in respect of necessary forms in divorce and separation), and as to the guardianship of minors, comprised a series of international rules determining which national law was to be applied in any case. And he added, "I know of no matter of agreement between the different nations which have been parties to The Hague Conferences to which there would be any real difficulty in getting the consent of Great Britain. In most matters, both those of substantial law and those of procedure, the conventions have agreed to that which has already been established in Great Britain. Where there is apparent disagreement I believe it is more of language or of form than in substance. . . . For these reasons it seems much to be regretted that Great Britain has not been a party to those conferences, and shows no intention of attending future ones."

The latest instance of our aloofness upon which Mr. Justice Phillimore commented is in regard to matters which affect mercantile and shipping interests in an important way. In 1902 the Comité Maritime International met at Hamburg. The result of its meeting was that draft treaties (*a*) as to a uniform law of collisions at sea, (*b*) as to a uniform law of salvage, were agreed to, almost with unanimity, by the distinguished jurists, practical shipowners, and men of business who were present or who were represented at the meeting. The Bureau of the Comité brought these draft treaties to the knowledge of the Ministers of the King of the Belgians, who took them into consideration, and were good enough to correspond thereon with the Governments of other nations. "It is understood," said Mr. Justice Phillimore, "that Great Britain has hitherto declined to enter upon any consideration of these treaties." When one calls to mind the success which attended the diplomatic conference at Washington which passed the Regulations for preventing collisions at sea, one may not unreasonably be permitted to hope that the consideration may yet be given to these draft treaties. It is interesting to learn, on such high authority on maritime law as that of the author of the paper, that "the draft treaty on salvage embodies the English law without substantial, I believe even without formal, modification; while there are only three modifications of English law in the

draft treaty on collisions; and only one of these is likely to give rise to dispute."

The reading of Mr. Justice Phillimore's paper was followed by the unanimous adoption by the Conference of a resolution which, in substance, expressed the very great importance which the Conference attached to action on the part of Great Britain in these matters, and the desire of the Conference that the Executive Committee of the Association should take proper steps respectfully to approach the British Government with the object of obtaining permission to lay the views of the Association before it by means of a deputation. Of course, it must always be borne in mind, as Mr. Justice Phillimore did not omit to point out, that in our case no change of private law can be made by treaty, unless Parliament agrees to carry it out. But every foreign Government which is party to a conference for the unification of law must be taken, I presume, to know that, if the Government of Great Britain consents to enter the conference, it does so subject to that reservation.

General Average and Negligent Shipowners.—The legal topic of discussion which remains for notice in this article was one of a technical nature, but also of considerable practical importance to the world of maritime commerce. What ought to be the effect, if any, upon the rights of the shipowner to a contribution in general average, of the fact that it was his fault, or the fault of others for which he is legally responsible, that created the occasion for the voluntary sacrifice? Ought the insertion of a "negligence clause" in the contract of carriage to make any, and, if so, what, difference? A long and vigorous discussion upon these points was originated by (1) a paper read by Dr. Stubbs, (2) a report presented by M. Maeterlinck on behalf of the Belgian Maritime Law Association, and (3) a Resolution, proposed by Mr. Carver K.C., setting forth the terms of a rule or formula which might be embodied in contracts of affreightment so as to allay all doubt as to the rights of the parties in these matters. The law upon these points in England is settled by decisions of recent date. The fact that the general average act—the voluntary sacrifice for the common safety—became needful through negligence for which the shipowner is responsible does not prevent rights to general average contribution arising. "The Rhodian Law," said Lord Watson in *Strang* v. *Scott* (14 A.C. 601), "which in that respect is the law of England, bases the right of contribution, not upon the causes of the danger to the ship, but upon its actual presence." But if the general average act became needful through such negligence, the right of the shipowner to contribution is taken away by his own fault; provided, at least, that the fault is one which gives a right of action, under the express or implied terms of the contract of carriage, to the person who would otherwise be liable to contribute. Further, it is part of our law that if by the terms of the contract of carriage the shipowner is protected from the consequences of such negligence, there is no bar to his claiming a

general average contribution.[1] Whilst, however, these points are settled in our Courts, there is a divergence of opinion in other countries in regard to the last of them. There are, I believe, two decisions of French Courts which are in agreement with the English decisions. In 1898, in the Supreme Court of the United States in the case of *The Irrawaddy*, cited by Dr. Stubbs, it was held by the majority of judges (Brown and McKenna JJ. dissenting) that the statutory protection of a shipowner, under the provisions of the Harter Act, against liability for the negligence of his servants, did not entitle him to a general average contribution when the cause of the voluntary sacrifice for the common safety lay in the master's negligent navigation of the ship. The question there was one of statutory and not of contractual immunity; but it would not seem easy to base a distinction on this ground, and, in fact, in the course of the case the Court considered and did not intimate any concurrence in the judgment of Lord Hannen (then Hannen J.) in *The Carron Park*, that contractual freedom from liability to a claim for loss by negligence in a bill of lading would entitle a shipowner to recover a general average contribution in a case where the loss had its origin in the negligence of his servants. In Holland the same view has, I believe, been taken by the Courts as was taken in America. In Belgium judicial opinion has been divided. The Court of Appeal in Brussels has decided in accord with English law; but a later decision of the Court of Appeal of Ghent, upheld by the Cour de Cassation, is in conflict with it.

In this state of things the Antwerp Conference, after an animated discussion, came to conclusions which were expressed in answer to two questions which were formulated in the Report of the Belgian Committee. The first question was: "What should be the effect of a fault of a captain in relation to general average, and independently of any contract to the contrary?" The answer, adopted substantially from the answer given in the Report, as that of the majority of the Committee, was: "The original cause of the act of common safety being indifferent, the fault of the captain should be without influence on the principle of general average. The other parties maintain their recourse (conservent leur recours) against the shipowner on account of his faults or those of his servants, if any." The second question was: "Do general clauses, exempting the shipowner from liability for fault and negligence of the captain modify the answer to the first question, or have they no effect in general average?" This question was answered: "The general negligence clauses should not modify the answer to the first question, excepting that the recourse should be void." As I should interpret the meaning of these answers, the state of the law as it ought, according to them, to be would not substantially differ from the law of this country. Practically, so far as our law is concerned, it is immaterial whether, if the shipowner sues for a general average con-

[1] *The Carron Park*, 15 P.D. 203; *Milburn* v. *Jamaica Fruit Importing Co.* [1900], 2 Q.B.D. 540.

tribution, the answer to his claim, which his responsibility for the negligence occasioning the general average loss affords to the party who would otherwise be liable to contribute, takes the form of a defence or of a counter-claim. If he cannot retain the contribution, he may well be considered incapable of legally claiming it. If, on the other hand, the shipowner is protected by a negligence clause in the contract of carriage, then there is nothing which, either in the form of a defence or counter-claim, can be used as a bar to his claim which arises under the law of general average, because the person sued for contribution is precluded from having "recourse," in answer to the claim, to negligence which does not constitute an actionable wrong or breach of contract. I am inclined not to differ from Mr. Carver when, in speaking at the Conference on his motion for the adoption of a clause which might be inserted in contracts of carriage by sea, he said that in his opinion a sound view in jurisprudence and a sound view in business is that the law of general average is one thing and that the law of affreightment is another, and that the two things should be quite distinct. Possibly a declaration of the rights arising under the law of affreightment and the law of general average which plainly recognises their independence (as these two answers do) is better than one which appears to introduce into the latter limitations derived from the relations created by the former. But I do not think that the law as approved by the answers of the Conference will create any practical divergence from the law of England.

Adoption of Mr. Carver's Resolution.—Mr. Carver's proposed clause, which was adopted by the Conference, after the motion had been seconded and warmly supported by Mr. Gray Hill, the President of the Law Society, ran thus: "Rights to contribution in general average shall not be affected though the danger which gave rise to the sacrifice or expenditure may have been due to default of one of the parties to the adventure; but this shall not prejudice any remedies which may be open against that party for such default." Remedies, I suppose, ought to be interpreted in the same way as "recourse" in the Report of the Belgian Committee. I do not understand that the effect of the Rule, if adopted in the contracts of affreightment of the Rule, would be in any way to diminish the right of the defendant, in an action for a general average contribution, to do that which the English law entitles him to do, when the fault of the plaintiff in causing the danger constitutes an actionable breach of contract or duty under the contract of carriage—viz., to base upon that fault an answer to the action. The purpose of the Rule, as I understand it, is to do away with the conflict caused by the American and Dutch decisions by freeing, by express agreement, the operation of the law of general average from limitations arising out of the fault of the party claiming contribution, whilst preserving to all concerned the rights (statutory or contractual) which arise out of the contract of carriage. These rights, where there is no "negligence clause," would still afford an answer to an action for contribution, for default of one

of the parties to the adventure clearly includes that of the party claiming contribution; and, as I have already said, it appears to me to be practically immaterial, in our Courts, at any rate, whether the answer takes the form of a counter-claim or is pleaded as a defence, properly so called, in order to avoid circuity of action. Where the shipowner, by statute or contract, is protected from claims for damage or loss arising from negligence, there would be no answer of any kind to the claim for contribution, because there would be no "remedy" open and no claim for damages. It was resolved by the Conference that this Rule should not be inserted in the York-Antwerp Rules, but should be known as the Antwerp Rule 1903, which may be adopted in contracts of affreightment. The matter is not free from difficulty, but let us hope that the new Rule may be proved by experience to have the salutary effect which will justify the action of the Conference in approving it.

[*Contributed by* T. G. Carver, Esq., K.C.]

Work of the Conference.—Two steps of practical importance were taken by this Conference which it is worth while to consider with some care. Other work was done, in initiating a comparative enquiry into the law of companies; in furthering proposals for facilitating execution of foreign judgments; and by forming a Committee which may bring about greater uniformity of practice among average adjusters. Also several papers of much interest were read. But the matters which deserve immediate attention were two—one touching those concerned with marine commercial law; the other of wider significance, touching the attitude of the British Government towards the efforts which are being made to bring laws into greater uniformity.

1. **Marine Commercial Law: General Average.**—Let us take the more limited first. The old law of maritime adventures, that contribution shall be made to sacrifices for the common safety,—the law of general average,—has in recent times been much developed. One development has been by way of qualification of the right to have contribution. If the danger, to avoid which the sacrifice has been made, has been brought about by some fault of one of the adventurers, it has been repeatedly said that that person, if his interest has been sacrificed, cannot claim to have his loss made good. Some have even gone so far as to say that in such a case the loss is not a general average loss.

As an illustration, take the common case of a ship navigated negligently, so as to get ashore; her engines are worked under dangerous conditions to try and bring her off, and are thereby damaged; lighters and men are employed to discharge some of the cargo; and when the ship has been got off, further expenses are incurred by putting into a port of refuge.

These losses and expenses fall at first on the shipowner. If no question of negligence were involved, they would be made good to him by contributions of all the property interests (cargo, ship, and freight) which have thus been saved. But, as the need for the sacrifice and expenditure arose by negligence of the shipowner's servant, the master, and as the shipowner was responsible for the failure of duty, it is said that his right to contribution does not arise at all.

Clauses in Relief of Shipowner.—This being so, the question has arisen in various places, How is this affected by the modern use of clauses in contracts of carriage relieving the shipowner from responsibility for negligence of his servants? In England the point first arose in 1890, in the case of the *Carron Park*.[1] Sir James Hannen held that a general exception of negligence in a charter-party enabled the shipowner to claim contribution to general average expenses, though rendered necessary by negligence of his engineer. And that view was, in 1900, approved by the Court of Appeal in the case of *Milburn* v. *Jamaica Fruit Co.*[2]

But even in England the position cannot be said to be quite clear. The question is really one of construction of the contract of carriage, and the Courts have repeatedly held that the clause of exceptions relates to the obligations of the contract to carry, not to liabilities for general average.[3] If so, it is difficult to see how such a clause can give rise to a claim for general average contributions, which would not otherwise exist. Vaughan Williams L.J., in a minority in *Milburn* v. *Jamaica Fruit Co.*, thought that the *Carron Park* was wrongly decided. When we turn to the decisions in other countries, this doubt is confirmed; and the position is seen to be quite unsatisfactory for those who desire to attain uniformity of rules on this subject.

The United States.—In the United States the leading case is that of the *Irrawaddy*,[4] a decision of the Supreme Court that, under circumstances similar to those in the *Carron Park*, the shipowner could *not* claim contributions. The cases differ, however, in that the Court was construing, not a charter-party, but an Act, known as the Harter Act, under which the shipowner was exempted from responsibility "for damage or loss resulting from faults or errors in navigation." The Court said: "It is one thing to exonerate the ship and its owner from liability for the negligence of those who manage the vessel; it is another thing to authorise the owner to do what he could not do before—namely, share in the general average occasioned by the master and crew.

This difference between Great Britain and the United States is paralleled on the Continent of Europe among the States with codified laws. In France the Courts have held that, where negligence is excepted in the contract of carriage, the shipowner can claim contribution to port of refuge

[1] 15 P.D. 203.
[2] 1900, 2 Q.B. 540.
[3] See *Burton* v. *English* (C.A.), 12 Q.B.D. 218.
[4] 1898, 171 U.S. 187.

expenses, though rendered necessary by negligence. In Holland the contrary has been held. While in Belgium there have been decisions both ways, the more recent being contrary to the *Carron Park*; and the ultimate conclusion seems to be uncertain.

Germany.—In Germany, Art. 702 of the Maritime Code enacts that the rules of general average apply, though the danger may have been occasioned by fault; but provides that "the person interested who is in fault can, however, not only make no demand for compensation on account of any damage which he may thereby sustain, but is likewise answerable to each contributor for the loss which the latter may suffer through such damage being apportioned as general average."[1] This, presumably, is subject to the terms of any contract between the parties dealing with the matter. But I am not aware whether there have been any decisions on the point.

In view of these divergences it seems clear that the efforts to obtain uniformity in relation to general average, which produced the York-Antwerp Rules, need to be supplemented. Those Rules are now very widely adopted in contracts of carriage; with the result that, wherever a voyage may come to an end, the adjustment of the general average losses incurred is made in the main according to one and the same set of principles. Can this desirable result be attained also where the matter is complicated by "fault"? The cases which have arisen have related to danger caused by negligence of the master and crew, but similar questions, and probably similar differences in the answers, are likely to arise in relation to danger caused by unseaworthiness of the ship, or by unfit condition of cargo when shipped.

The Practical Problem.—The practical matter, then, to be dealt with by the Conference was how to provide for uniform results in cases of general average necessitated by such faults. Three general questions, put by the Belgian Maritime Law Association, were answered by the Conference as follows:—

1. What should be the effect of a fault of the captain in relation to general average, and independently of any contract to the contrary?

Ans. The original cause of the Act of common safety being indifferent, the fault of the captain should be without influence on the principle of general average. The other parties maintain their recourse against the shipowner on account of his faults or those of his servants, if any.

2. Do general clauses, exempting the shipowner from liability for fault and negligence of the captain, modify the answer to the first question, or have they no effect in general average?

Ans. The general negligence clause should not modify the answer to the first question, excepting that the recourse should be void.

3. Is it desirable to insert in the York-Antwerp Rules a rule determining the answer to the above questions, or is it better to leave it to the agreement of the parties?

Ans. It is not desirable to insert in the York-Antwerp Rules a rule determining the answers to the above questions.

[1] Arnold's translation.

The Conference agreed in the view that it is not desirable to attempt to interfere with the existing body of York-Antwerp Rules; but it considered that shippers and shipowners might well avoid the conflict of results, above pointed out, by adding a clause to their contracts of affreightment. And, on the motion of the present writer, seconded by Mr. Gray Hill (President of the Law Society), it adopted the following "Antwerp Rule 1903," as proper to be so used:—

Rights to contribution in general average shall not be affected though the danger which gave rise to the sacrifice or expenditure may have been due to default of one of the parties to the adventure, but this shall not prejudice any remedies which may be open against that party for such default.

The view thus expressed of what the law should be on this subject may seem to be contrary to that which judges and legislators have taken. But it commends itself, on consideration, as sound in principle and in policy.

Common Danger the Sufficient Condition of Contribution.—The principle on which the law of general average is based is that sacrifices voluntarily made for the common safety, under the pressure of a common danger, ought to be made good by all who benefit. The policy of the law is to encourage readiness to make the right sacrifices without hesitation. It is not necessary to enter into enquiry as to how the danger arose; the fact of danger and the act of sacrifice are sufficient to justify the rule of contribution. "The Rhodian law, which in that respect is the law of England, bases the right to contribution not upon the causes of the danger to the ship, but upon its actual presence."[1]

If the danger has been brought about improperly by some wrongful act, or by some breach of obligation, contractual or other, those who are put to loss can seek their remedy against those responsible for the wrongful act, or breach. And where that remedy would be against the person who is claiming contribution, they would be in effect able to defeat his claim by counter-claim. There is, therefore, no need to hamper general average law with this question of responsibility for the danger. But it has been done; and it is the failure to keep the two things distinct that has given rise to the present difficulty and uncertainty.

The only course is for the parties to correct the law by their contracts. If they adopt the rule formulated by the Conference, we may expect that the difficulty will disappear.

2. **The Government and Legal Conferences.**—The question of general interest to which I have referred was that brought forward in a paper by Mr. Justice Phillimore (since published in the *Law Magazine* for November, 1903) on "The Attitude of the British Government towards Legal Conferences"—a paper in which he very plainly expressed the view that the refusals of

[1] *Per* Lord Watson in *Strang* v. *Scott*, 14 A.C. at p. 609.

the British Government to join in the recent Conferences on private International Law at the Hague, and in the proposed Conference upon Collision and Salvage Law, are much to be regretted. The Conference shared that view, and on the motion of Mr. Justice Kennedy, seconded by Prof. C. Noble Gregory, Dean of Faculty in Law at the University of Iowa, it was resolved that an effort should be made to obtain a reconsideration of the matter by the Government.

The Conferences at The Hague to which Mr. Justice Phillimore's paper referred were those which have endeavoured to arrive at a set of rules, which may be adopted uniformly by all States, for the solution of conflicts of law. On the initiative of the Government of Holland, Conferences were held in 1893, and 1894, of representatives nominated by the Governments of fourteen European States. Their object was not to bring about alterations of the laws in the several States, but to formulate rules to determine how those laws are to be applied in cases of conflict. In other words, to bring about a system of private international law, a body of rules by which in all Courts the rights of individuals may be determined when they are affected by conflicting laws of two or more States.

The subjects dealt with were as follows: (1) Marriage; (2) Form of Legal Acts; (3) Succession and Wills; (4) Judicial Competency; (5) Guardianship; (6) Bankruptcy.

The work of these Conferences was followed up by the Dutch Government; and the first result was a treaty of November 14th, 1896, among all the States which had been represented, dealing with certain matters of procedure. These included the inter-State communication of judicial documents; assistance by Courts of one country to Courts of another by *Commissions rogatoires*; removal of the obligation to give bail on the ground of being a foreigner; and enforcement in other countries of orders as to costs.

The Government of Holland then proposed a third Conference to take up other points which had been considered in 1893-4; and by way of preparation that Government appointed a Royal Commission to codify private international law on marriage, divorce, guardianship, and succession. This Code, which practically embodied the resolutions of the Conferences, was submitted to the Powers, together with another Code (prepared by the Government of Holland) dealing with the effect of marriage on the property of the parties to the marriage. Reports upon these were made; and the proposals and reports were considered at a further Conference of the representatives of the Powers held at The Hague in 1900. This resulted in an important *projet de convention*, formulating rules for determining the validity of marriages, where more than one law is involved. And that *projet* became in 1902 a Convention, to which, it is believed, many if not all of the Powers represented have become parties.

With regard to The Hague Conferences, the British Government have so far refused to take any part. Why they have done so we do not know. The

work seems to be one of obvious usefulness. It is a clear misfortune that there should not be one and the same set of rules for determining how conflicts of laws on such subjects as those above mentioned should be settled, in whatever country they arise. As Mr. Justice Phillimore said, "I know of no matter of agreement between the different nations which have been parties to The Hague Conferences to which there would be any real difficulty in getting the consent of Great Britain." But agreement and legislation are necessary in order to bring about uniformity.

Proposed Conference on Collision and Salvage.—The other Conference referred to is that which has been proposed to the Powers by the Government of Belgium, to take up the work done by the Comité Maritime International on the subjects of collision law and salvage law. That work was described in the number of this journal published in December, 1902.

Here, again, it is understood that Great Britain has at present refused the invitation which has been given, and that the Conference will be held by the other Powers in her absence. Great Britain has by far the greatest interest in the subjects to be discussed. Her merchants, shipowners, and underwriters are largely concerned not only with her own maritime law, but also with the maritime law enforced by the other Powers. And there seems little doubt that a Convention will be made among them. Is it well that that should come about without the voice of Great Britain being heard upon points which may give rise to differences of opinion? And is it well that Great Britain should show herself so utterly indifferent to the importance of having maritime law the same on both sides of the Channel? Are we always to be content with the anomaly that the rights and liabilities of shipowners vary according to whether a delinquent ship is caught in a British port, or in a foreign? And can any method be suggested of altering this state of things better than that which is being attempted?

To quote Mr. Justice Phillimore: "I understand and I sympathise with the disappointment of the Comité Maritime, and the annoyance of Continental nations, at this *non possumus* attitude. The attitude is not only churlish, but may even seem ridiculous when one recollects that the Draft Treaty on Salvage embodies the English law without substantial, I believe even without formal, modification; while there are only three modifications of English law in the Draft Treaty on Collisions; and only one of these is likely to give rise to dispute."

These drafts are, however, the results of a series of discussions at which the views of British lawyers and shipowners have been fully presented. It may well be that, in the absence of British representatives, a Convention will be arrived at less in accord with our ideas, and that those who have agreed with those ideas will find themselves overruled in our absence.

It is much to be hoped that the matter may be again taken into consideration by the Secretary of State for Foreign Affairs.

THE GREAT JURISTS OF THE WORLD.

III.—BARTOLUS[1] (1313—1357 A.D.).

[*Contributed by* Sir William Rattigan, LL.D., M.P.]

Bartolus compared with Ulpian.—In some respects the great jurist of the Middle Ages whose name stands at the head of this article bears a somewhat close resemblance to Ulpian, the most famous jurist of the decadent Roman Empire of the West, from which the animating health and vigour of the Augustan age had already fled[2] or was fast fleeing. Like Ulpian, Bartolus was not distinguished by originality of thought or exposition, but he had Ulpian's faculty of clearness and perspicacity of vision, to which he mainly owed the high reputation he acquired in the course of a comparatively brief career, and which his writings continued to maintain for at least two centuries after his death. He could also on occasion play the part of an adroit courtier, as we shall see in connection with his mission to the Emperor Charles IV.

Their Respective Periods contrasted.—It is interesting, moreover, to notice that while Ulpian flourished in a period which witnessed the grant of citizenship to all Roman subjects, involving, as Gibbon says,[3] the vain title and real obligations of Roman citizens, thereby proclaiming to the world the universality and unity of the Roman sovereignty, and elevating the Roman Law into a great system of territorial jurisprudence which displaced every other, Bartolus saw the light of day under very changed circumstances. Unity had then given place to diversity, the Empire of the Cæsars had long since ceased to represent a living political force in the west of Europe,

[1] The following authorities have been mostly consulted: Savigny's *Geschichte des Römischen Rechts im Mittelalter*, Vol. VI., 122-63; *La Grande Encyclopédie*, Vol. V., p. 524, *et seq.*; Lainé, *Introduction au droit International Privé*, Tome I., 115-63; Weiss, *Traite théorique et pratique de droit International Privé*, Vol. I., s. 2, p. 15, *et seq.*; Rivier, *Introduction Historique au Droit Romain*, ss. 214-5, p. 568, *et seq.*; Laurent, *Le droit civil International*, Ch. III., p. 273, *et seq.*; Fiore, *Diritto Internazionale Privato*, Vol. I., Cap. IV., p. 43, *et seq.*; Laghi, *Il diritto Internazionale Privato*, Vol. I., Bk. I., Cap. I., p. 39, *et seq.*; Holtzendorff's *Encyklopädie der Rechtswissenschaft*, I., p. 155, *et seq.*

[2] Gibbon, *Decline and Fall of the Roman Empire*, Vol. I., Ch. VII., p. 194, Bury's ed.

[3] *Ibid.*, p. 164.

and under the influence of barbarian individualism man, and not the citizen, had become the true juridical being and the subject of rights. The invasions of the barbarian hordes, under Attila the Hun, Alaric the Goth, and Genseric the Vandal, had already broken to a large extent the spell of Roman universality. Even so early as the year 476 A.D. the greater part of the lands which had formerly composed the Roman Empire of the West, had been divided into six large Teutonic kingdoms. Italy and Noricum formed the kingdom of Odoacer; North Africa constituted the dominion of Genseric or Gaiseric the Vandal; from the Loire to the Straits of Gibraltar was ruled by Euric; the valleys of the Rhone and Saone belonged to Gungobad, the Burgundian; the Frankish princes reigned on the Meuse, Moselle, and Lower Rhine; and the Suevi carved out a kingdom which would correspond with North Portugal and Gallicia. Under the influence of this general disruption and partition of the former Roman Empire, a new order of things now took the place of the older system, and henceforth we find that the independence of the individual, which, as Guizot rightly says, is the dominant character of barbarism, furnishes also the keynote for a right understanding of that march of progress in the history of the development of legal ideas which evolves gradually between the opposite poles of juridical thought, marked by the principle of Roman territoriality on the one hand, and by that of personality of the later European jurisprudence on the other. Each Hun, Goth, or Frank cherished his own free and independent personality, and acknowledged no law but that of the folk-right of his own tribe, which he had brought with him. Therefore, just as it is in the pristine forests of Germany that Montesquieu tells us we must seek to find the roots of liberty, so it is amongst the barbarian hordes who invaded Italy that we must look for the first germs of that fundamental notion which consecrated the supreme authority of personal laws, and which was destined to exercise so large and dominating an influence upon the development of Private International Law in Continental Europe.

Commerce of Free Burghal Cities in Italy favours Notion of Personality.—As we advance towards the twelfth and thirteenth centuries the growth of commerce in the free burghal cities of Italy had no small influence in confirming the notion that a man carried his personality with him, and did not lose it by mere temporary residence for the purposes of trade or the like in a city other than that in which he was born. Nay, even in the same city it was no uncommon experience to find conflicting laws prevailing in different quarters of it, much in the same way as local customs in India regulating the right of pre-emption are found to vary at the present day in different *muhallas* or sub-divisions of the same city.

Study of Roman Law.—But although the Middle Ages as a period were distinguished by the growth of a vast body of personal laws, the study of the Roman Law had never actually ceased to attract the attention of the best intellects of each succeeding century. It may be, and is no doubt true, that

Rome, which was the proper seat of legal education in Ulpian's time, ceased to be so some time (probably four centuries) after the reign of Justinian, who, himself, on his conquest of Italy, had confirmed the Roman School of Law in its privileges, and contributed to its upkeep by supplying funds for the payment of its teachers. But with the dismemberment of the Western Empire law-schools as public endowments were no longer maintained. The Roman Law was, nevertheless, taught in the ordinary secular schools as a branch of old literature, and an instance of this at Toul is quoted by Savigny from a contemporary account of Pope Leo IX., who died in 1054 A.D. About the same time we have undeniable traces of a school of law at Ravenna, and, according to Odofredus, who wrote in the thirteenth century, this was the same school which had formerly existed at Rome.

In Bartolus's time we know that law was taught in Italy, at Pisa, Perugia, Padua, and Bologna ; so that while a new world of legal ideas had been called into existence, it was more by way of supplement (*in subsidium*) than in substitution of that system which the genius of Rome had established for the perpetual instruction and guidance of civilised humanity. And this tendency was materially strengthened by the attitude of the Roman Catholic Church. By its very constitution the Church of Rome stood forth as the embodiment of unity and universality ; and while the priesthood represented the people in the abstract, the papacy was the symbol of the State and sovereignty. Accordingly, from the seventh century onwards, the principle *Ecclesia vivit lege romana* was one which was constantly recognised by ecclesiastical writers.

The School of Glossators.—But it is from the end of the eleventh century that a systematic study of the Roman Law can be said to have been revived. This was the work of the Jurist Irnerius, who was the founder of the School of Glossators which flourished down to the middle of the thirteenth century, but of whose personal history we know very little, except that he died about 1188 A.D., and, according to Odofredus, *studuit per se, sicut potuit.* It was this school which was the precursor of that of Bartolus, and which derived its name from the fact that its teaching consisted in brief glosses on the text of the original Roman law-books. Its chief ornament was Accursius (1182-1260), whose masterly *glossa ordinaria* fittingly closed this era. This work obtained such general repute that it practically superseded the original sources of the law, to such an extent indeed that it became a recognised rule *quod non agnoscit glossa, non agnoscit curia.*

Followed by that of the Commentators and Post-Glossators.—This era was followed by that of the Commentators and Post-Glossators, who abandoned the form of glosses upon texts, and adopted instead the more comprehensive and more scientific method of dealing separately with particular branches of law and grouping together all the principles governing the same. These rules were, perhaps, not always very clearly expressed nor arranged in the most convenient order, while the Latin which the com-

mentators employed was described, but perhaps by too captious a critic—Rabelais—as that of the *cuisinier et marmiteux, non de Jurisconsulte.* Among the earlier jurists of this school were Oldradus (1335), who was a professor of law at Padua, Siena, Montpellier, Perugia, and Bologna, and among his disciples were Bartolus and Alberic; Pierre de Belleperche or Petrus de Bellapertica, who died in 1308; Joannes Andreæ (Jean d'Andrè), the most celebrated authority on procedure in the Middle Ages, who died in 1348; and Cinus, the pupil of Dinus, a Florentine and former professor at Bologna, who died in 1303, the friend of Dante and the master of Bartolus and Petrarch, a poet himself (whose sonnet in memory of Selvaggia and the canzone to Dante are fine examples of his style at best) as well as a jurist of considerable eminence, who *inter alia* is distinguished for having maintained, contrary to the then prevailing opinion in favour of the *lex rei sitæ*, that the form of a testament was to be regulated by the *lex loci actus.*

Bartolus, Personal History.—It was in this era in the history of jurisprudence, and in the midst of such surroundings, that we reach the name of Bartolus. Of his birth and early years we have little reliable knowledge. He was a native of Sassoferrato, a town in the province of Ancona, on the river Sentino, which was also the birthplace of Perroti (died 1480), a leading scholar of the fifteenth century who was celebrated for his commentaries on Statius and Martial, and who also translated five books of Polybius into Latin. The year of Bartolus's birth is variously stated between 1309-14, but as he tells us himself (*Dig. Novum.* L. *quidam cum filium* 132, de V.O.) that he was promoted to the degree of Doctor of Laws at the age of twenty-one, and as this event occurred on November 10th, 1334, we may safely accept the suggestion of Savigny,[1] that Bartolus must have been born between November 10th, 1313, and November 10th, 1314. His father's name is given in his doctor's diploma (a copy of which is given by Lancellotus) as Franciscus, son of Bonaccursius, and his mother's name, we are told by his biographer Lancellotus, who published his life in 1576, was *Sancta*, which seems to effectually dispose of the story that he was a foundling. He had two brothers, Bonaccursius (called after his grandfather) and Peter. His first tutor was the grammarian Peter of Assisi, a man of whom he speaks with earnest gratitude, as learned without hypocrisy, and of wonderful piety. At the age of fourteen he began the study of law at Perugia, and his principal tutor was the Cinus already mentioned, whose lectures, he told Baldus, had exercised most influence upon his legal training. He subsequently removed to Bologna, and there he studied under four distinguished jurists, Buttrigarius, Rainerius, Oldradus, and Belvisio. He seems also to have applied himself to the study of geometry under Guido of Perugia, a *magnus Theologus*, as Bartolus calls him, and of the Hebrew language. He held the office of judicial assessor at Todi and Pisa, and it is said by Diplovataccius that he was banished for four years for an unjust sentence of death he had passed

[1] *Geschichte des Römischen Rechts im Mittelalter*, Bd. VI., p. 125, n. 5.

while exercising one of these offices. But the story is disbelieved by Savigny,[1] and there is no contemporary proof in support of it. In the autumn of 1839 we find him appointed as a colleague of his former master Rainerius at Pisa on a salary of one hundred and fifty florins, at which time he tells us he was twenty-six years of age, and the house in which he lived in Pisa was still preserved in Savigny's time with an inscription upon it commemorating the fact. In 1343 he removed to Perugia, where he soon established a widespread reputation as a law teacher, and pupils from all parts of Italy flocked to his lectures, two of the most famous being Baldus and his brother Angelus. Five years afterwards Perugia, in grateful remembrance of his eminent services, conferred upon him and his brother Bonaccursius the right of citizenship, and in 1355 this city had still greater cause to revere his memory, for, being sent on a mission to the Emperor Charles IV., who was then at Pisa, Bartolus obtained for it many privileges as well as a confirmatory charter for its University. Nor did he return without personal honours for himself, for the Emperor ennobled him, and appointed him a councillor, besides conferring upon him other marks of imperial favour. Among these was the singular privilege that he and all his descendants who should be professors of law should have the power of legitimising their pupils in cases of bastardy, or of relieving them from the disadvantages of minority. Bartolus was twice married: his first wife was a native of Ancona, but beyond this fact and that the union did not last long, we know little else about her; his second wife was Pellina di Bovarello of Perugia, of the Alfani family, who survived him, and by whom he had a family of two sons and four daughters. He died at Perugia in July, 1357, at the age of forty-four, and was buried in the Church of St. Francesco, where a monument was erected to his memory with the inscription so eloquent in its brevity, *Ossa Bartoli.* By his will, executed on May 14th, 1356, Bartolus designated his two sons as his principal heirs, but he gave each of his daughters a legacy of four hundred and fifty florins, and he also made a suitable provision for his wife. He bequeathed his modest library, which consisted of thirty juristical and thirty-four theological volumes, indicating in which direction his tastes lay, to a monastery in Perugia, from whence it is said a monk stole the volumes and carried them to Naples. He belonged to the moderate clerical party more by reason that he lived, as he says, *in terris amicis ecclesiæ* than from strong conviction, and as a rule he avoided mixing himself up in the politics of the day arising out of the Guelf and Ghibelline feud.

His Great Authority.—Such are the few particulars of his private life which have come down to us; and considering that his public career was confined within the brief period of eighteen or twenty years, it is astonishing what a reputation he succeeded in building up for himself at an age when most men are only beginning to lay the foundations of their future fame. No jurist of the Middle Ages ever acquired such a reputation as was

[1] Vol. VI., p. 129.

universally conceded to him. His authority as an expounder of the Roman Law was unquestioned in his lifetime, and revered for centuries after his death. He was called *lucerna* or *pater juris* [1] and *dux jureconsultorum*, and he exercised for a long time in Italy, Spain, and Portugal the authority of a legislator. At Padua a Chair was even created for the exposition of the opinions of Bartolus. If his reputation was subsequently overshadowed in France and Italy by the historical school represented by Cujas, Alciat (*b.* 1492, *d.* 1550 A.D.), and others, it continued more or less unimpaired in Germany from the "reception" of the Roman Law as the "Common Law" in the fifteenth century down to modern times; and even at this date we must admit that there were solid grounds for the pre-eminent respect that was originally accorded to him. He was above all things a practical lawyer, and his strong practical common sense convinced him of the necessity of evolving from the chaos of conflicting Statutes, customs, and feudal laws which prevailed in his day some principles of general application which were suitable to the age in which he lived. This was the great aim of his life, unhappily cut short by an untimely death while he was still in the vigour of manhood. He wished to draw from the Roman Law, the Canon Law, the Feudal Law, and Customary Law a sort of Common Law which would avoid the technicalities of the one, the narrowness of another, the harshness of a third, and the defects and deficiencies of a fourth; and if he had been spared to run the average age allotted to man, he would probably have left behind him more imperishable work as the fruit of his labours. But as we shall see presently, there are still to be found in his works the materials for the construction of many of the leading doctrines of Private International Law.

His Distinctive Teaching.—In their original shape his writings for the most part took the form of lectures, which were delivered by him as part of his University courses; but these were subsequently amplified from notes and manuscript comments, and published in the collected edition of his works, which first appeared in Venice in 1475 in five volumes, and finally in eleven volumes in 1615. This circumstance, no doubt, accounts for the fact that in their published form his writings do not reveal that strong personality of the man which was so impressed upon his students in the lecture-room. Many of his critics, therefore, have been unable to account for the superior reputation he enjoyed over his predecessors and contemporaries, and have attempted to account for it in various ways. But the truth is that his exegetical teaching of the law was carried out in a new spirit, with a freshness and energy, combined with a judicial calmness and soberness of judgment, which were wanting in others. So, again, if he employed the dialetical method which was so much in vogue in the previous century, and to an extent which rendered the works of his predecessors tiresome and unprofitable to read, he never abused it.

To us, however, he is chiefly interesting for the influence he exer-

[1] Laurent, *Le droit Civil International*, Vol. I., p. 299.

cised in developing the theory of Statutes, which can only be compared with that of d'Argentré at a much later period. That he was not the originator of this celebrated theory, as was once claimed for him, is now well established, for it is certain that both his own masters, Cinus and Oldrodus (to mention no others), directed their attention to the subject of the conflict of laws, and proposed certain rules for its solution. But if Bartolus cannot claim to have originated the above theory, it is certainly equally undeniable that he gave such an extended application to it, and so amplified the work of his predecessors that, while their names have more or less ceased to be connected with it, his own has been imperishably associated with its history. As Weiss says, if he was not the creator of this theory, he was at least one of its ancestors.[1] If, however, he has received in this connection more credit for originality than he deserved, he has, on the other hand, suffered from a want of true appreciation of his actual teaching. It has been said, for instance, that the fundamental notion underlying his theory was the general division of all laws into real and personal Statutes. But such a dual division is completely foreign to the whole school of Italian writers of the period and equally to his own,[2] and is really characteristic since the sixteenth century of the French school under the teaching of d'Argentré, who was responsible for it.[3] It is true that Bartolus incidentally affirms that a disposition of the law is to be regarded as real or personal according as its terms may relate to things or persons. But that is only in the nature of a passing observation by way of illustration, and by no means embodies what may be termed the kernel of his own teaching, as many writers have affected to believe.

In substance the doctrine of Statutes, as taught by the Post-Glossators, may be summarised in this way: (1) The Roman Law is universal, and therefore common to strangers also; (2) the Statutory Law, as an exception to the former, is restricted to those persons and things which are subject to the sovereignty which enacted it. From these leading principles the following consequences resulted: (*a*) that a Statute which affected *persons* only did not operate against strangers (*Statuta in non subditos jurisdictioni statuentem disponere non possunt*); (*b*) that a Statute which referred to *things* operated against strangers as well as natives, because things were supposed to be under the power of the legislating authority (*Statuta quæ afficiunt res ligant forenses*); and (*c*) that a Statute which affected the person follows the citizen wherever he goes (*Civis ligatur etiam extra territorium statuta patriæ*).[4] As illustrating the application of these general

[1] *Traité théorique et pratique de droit International Privé*, Vol. I., p. 16, Paris, 1898.

[2] The modern Italian school regards all rules of law as being in principle personal Statutes, and holds that in territorial and international operation they have no other limit than the so-called laws of public order.—*Von Bar*, s. 18 (c); Laurent, Vol. I., p. 307.

[3] Lainé, *Introduction au droit International Privé*, I., p. 132, Paris, 1888.

[4] Laghi, *Il diritto Internazionale Privato*, Vol. I., p. 50, s. 46.

principles, Bartolus taught that a Statute which either permitted a son of the family (*filius familias*) to execute a testament, or prohibited a husband from instituting his wife as his heir, did not affect strangers who were mere residents of the city where such a law prevailed. Conversely, a Statute which prohibited a husband from alienating his wife's estate without her consent is one that has an extra-territorial effect, and the like rule prevails, speaking generally, in dealing with other Statutes affecting the incapacity of a person. But Bartolus not unfrequently found himself confronted with complex cases (as in the matter of succession) which compelled him to devise special regulations and even to resort to ingenious constructions of a text to get over difficulties. It is here that the heel of Achilles is apparent in his armoury, and his vulnerable points were eagerly laid hold of by his later critics to subject him to merciless ridicule. Thus d'Argentré says, *ridere vulgo solent cum dicitur* Jus atrum *aut* atrum Jus *diversa dicere volenti.*

Dumoulin (1500-66) is equally severe upon him for deciding the controversy as to whether a Statute which provided that the eldest son should succeed to his father's whole estate applied to natives extra-territorially or was confined to persons within its own territory, by inquiring whether the law said *primogenitus succedat in omnibus bonis* or *bona decedentium veniant in primogenitum*: in the former case, according to Bartolus, the Statute was to be held to be one that dealt with persons; in the latter, one that dealt with things. Very naturally his critic says: *Tamen rejicitur hæc distinctio quæ verbalis est et communiter reprobatur.* But advocates of this distinction, puerile as it now seems to us, were nevertheless to be found as late as the eighteenth century, and it must not be forgotten that a very eminent French writer saw a distinction between *Jus vert* and *vert Jus.*[1] Bartolus was, in fact, trying to discover some way of distinguishing between Statutes which fell under one or the other of the above categories, and he begins the passage already quoted by saying, *Mihi videtur, quod verba statuti seu consuetudinis sunt diligenter intuenda*, an observation to which no possible objection could be taken. He then proceeds to say: *Aut illa disponunt circa res*, as, for instance, by the words, *Bona decedentis*, or that the *verba statuti seu consuetudinis disponunt circa personas*; and by way of illustration he adds, *ut per hæc verba: Primogenitus succedat.* It is clear, therefore, that the main object of Bartolus was to lay down the rule that the actual words of a Statute or custom must furnish the true key to its purport and intent, which is a rule well recognised at the present day. His particular illustration of that rule may have been well or ill chosen, but that is quite a secondary matter, and does not affect the soundness of the rule itself. Nor have his critics, d'Argentré and others, been any more successful in their own definitions, and they in turn have been criticised by later jurists. Besides, it must be remembered, in justice to Bartolus, that in the age in which he lived it was usual in the solution of every

[1] Laurent, Vol. I., p. 299.

question to base one's opinions upon some definite text of the Roman Law, and as he had to deal with new conditions and necessities unknown to the Roman jurists, it is not surprising that his interpretations were occasionally of a forced and arbitrary character. As Contuzzi aptly says, *il pensiero era dei Glossatori, la formola era del Diritto Romano.*[1] When due allowance is made for this circumstance, we need not dwell too much upon the more or less pardonable defects which are alleged against him. It is more generous to recognise that in him we have a jurist who, so early as the first half of the fourteenth century, was capable of laying down the principle, which has served as the foundation of all modern juristic science (*e forma e sempre formerà la base di ogni futuro sistema*, as Fusinato says), that there are certain laws which have an extra-territorial effect, and others which have not;[2] and, in further illustrating this broad principle by establishing the following important rules: (1) that juridical Acts, such as contracts and testaments, are valid as to form if they comply with the extrinsic requirements of the law of the place where they are made (*ubi est celebratus contractus*); (2) that the natural and presumably intended consequences of a convention are to be judged according to the law of the place of contract (*locus contractus*); (3) that *accidental* consequences which arise *ex post facto* by reason of neglect or delay (*propter negligentiam vel moram*) are, on the contrary, to be judged by the law of the place of performance (*in illo loco, in quem est collata solutio*), or, if no such place is fixed, or an alternative of many places is provided involving an election, then in that place *ubi petitur*; and (4) that rules of procedure and everything relating *ad litis ordinationem* are to be regulated by the *lex fori*—that is to say, the law of the *locus judicii*. The legists of later centuries have done little more than to elaborate these rules by a further process of development, and posterity, as Laurent[3] rightly contends, ought to be more indulgent and just to the memory of a man who, after all, has the glory of being a pioneer of the juristic science of to-day. It is easy to criticise the defects and errors of our predecessors, but if men like Bartolus had not paved the way for later writers, no science would ever be perfected.

His Principal Works.—Bartolus has left behind him a considerable literature on a variety of legal subjects. But amongst his principal works may be mentioned the following:

1. *Commentarius in tria Digesta*, first published in Venice in 1470 A.D.
2. *Commentarius in libros IX. Codices priores*, 1478.
3. *Commentarius Super libris III. posterioribus Codicis*, published in Naples in 1470. In the preface to this work he tells us that he undertook it after a severe illness which prevented him from pursuing his ordinary avocations, in order to occupy his mind with a useful study.

[1] *Diritto Internazionale Privato*, Milan, 1890, p. 42.

[2] Cf. Fiore, *Diritto Internazionale Privato*, 3rd ed., Vol. I., p. 48, Torino, 1888; Guido Fusinato, *Il principio della Senola Italiana*, p. 23, Bologna, 1885.

[3] Vol. I., p. 301.

4. *Lectura Super Authenticis* (1477), which is an attempt to compile an additional (eleventh) book of novels from the ordinances of the Emperor Henry VII. from the year 1312.

5. *Processus Satanæ contra Divam Virginem Coram Judice Jesu*, a mock trial between the Devil and the Virgin Mother of our Lord, in which the former claims the human race as his property, invoking his long possession in support of his claim, to which the Virgin replies that his possession has been *mala fide*, and therefore of no avail. It is needless to add that the claim is eventually defeated. The treatise is intended as a practical lesson on judicial procedure, and has been frequently printed and translated from the Latin into other languages. It has also suggested many similar works by other writers, such as the *Liber Belial, s. processus Luciferi contra Christum.* Savigny calls it a pedantic and extravagant jest,[1] but Bartolus certainly did not mean it to be accepted otherwise than as a serious contribution to the practical study of the rules of procedure.

Their Value at the Present Day.—Except as a connecting link between the older system of law prevailing in the period preceding the break-up of the Roman Empire of the West and that of the system adopted by the modern nations of Europe, the works of Bartolus offer little attraction to the ordinary student of the present day. They are now scarcely consulted, and lie neglected, at least in this country, on the shelves of public libraries. Nor is it likely that they will ever again regain much attention. But to those who are interested in discovering how the jurisprudence of modern times has arisen, by mere development and progressive change, from earlier systems, the influence which Bartolus exercised in the latter part of the Middle Ages is full of abiding interest. This period of history is particularly distinguished by examples of awakened energy and restless enterprise, and it is only by a knowledge of the part it played in the development of scientific law that we can hope to be able to appreciate the march of progress in subsequent centuries, or to understand the striking divergence of legal thought in different parts of Western Europe which even now distinguish the Italian, French, and German schools of jurisprudence. English law, of course, stands apart from the laws of the rest of the European nations in its relation to Roman Law, for here that law never acquired the same degree of influence which it naturally obtained on the Continent of Europe. Insular isolation has here served to mould our laws, our constitution, and our customs according to ideals suitable to the peculiar conditions under which we live. But even here expansion of trade and increasing intercourse with foreign nations have brought us face to face with the intricate problems arising out of a conflict of laws with which foreign jurists of the thirteenth and later centuries had to deal. No one who is interested in the solution of these problems, which are constantly becoming more and more complex in character, can be indifferent to, or fail to derive advantage from, a study of

[1] Vol. 6, page 160.

the principal works of those earlier thinkers in this department of jurisprudence; and it is from this point of view that Bartolus still deserves attention in this country. There was a time when it was usual to brand the Middle Ages as a dark and barbarous period distinguished only by *Faustrecht* or *Kolbenrecht*. But an age that could produce a Dante and a Petrarch can never be said to be unilluminated by genius, and among the jurists of the same age Bartolus can never be denied a pre-eminent position. It has been said that there is even a poetry in law; but as Von Ihering has eloquently observed, *die wahre Poesie des Rechts liegt in der Erhabenheit seines Problems und in seiner an Majestät und Gesetzmässigkeit dem Laufe der Gestirne vergleichbaren Bewegung*.[1] And a man like Bartolus, who took a leading part in this evolutionary movement, and initiated some of those lofty problems, deserves a niche in any gallery of great jurists of the world.

[1] *Geist des Römischen Rechts*, I., 62.

A COUNCIL OF THE EMPIRE.

[*Contributed by the* Hon. W. Pember Reeves.]

The establishment of a Council of the Empire has been discussed for a quarter of a century without leading to any legal or constitutional step being taken. As all students of Imperial questions are familiar with the arguments for and against the various types of Council suggested in the earlier years of the discussion, I need not now repeat them. It will be enough to say that though the proposal was long ago whittled down until it became nothing more than a suggestion for the setting up of an Advisory Committee, it failed, from the first, to find favour. The real objection to it in the Colonies was, I believe, due to the form in which it presented itself to the ordinary colonial imagination. There it took shape as a fussily meddlesome body composed of idle colonial absentees and distant Agents-General, leavened with an element of English bureaucracy, and presided over by a Secretary of State personally unknown to colonists. That such an assemblage should be distrusted and unwelcome was inevitable. The colonial democracies are, above all things, unwilling to be represented here by absentee colonists; nor has there been any manifest desire on the part of colonial Governments to expand the political side of the duties of their Agents-General. These remain very much where they were fifteen years ago. Moreover, the sort of "Colonial Institute Council" which was suggested in the 'eighties could not, I imagine, have been at all attractive to the powerful officials of those English Government Departments which have to deal with the affairs of the Empire. In more recent years Mr. Chamberlain found the Colonial Premiers divided on the matter of a Council. He and they fell back upon the expedient of periodical Conferences together. Lately we have had a noteworthy proposal from Mr. Haldane, K.C., of a kind of permanent Cabinet of the Empire.

The suggestions which I venture to make are briefly these: It seems to me possible to build something definite and permanent on the proposed periodical Premiers' Conference. Why should not a Council of the Empire be at once formed, composed simply of the Secretary for the Colonies and the Prime Minister of Canada, Australia, New Zealand, and Cape Colony, the last named to represent South Africa until its federation. I do not see why this small and compact body should not be either a Committee

of the King's Privy Council, with the right of audience, or independent of the Privy Council altogether; the former would be preferable. There would be no real difficulty in such a Council meeting every second year, either in London or elsewhere. In the intervals its members could consult by telegraph or writing. Telegrams, it may be noted, are not nearly as costly as they were a dozen years ago. The Council could discuss in absolute confidence any Imperial question which any of its members desired to bring forward, or which any Government within the Empire might wish to bring under its notice. At first its executive duties and powers would be few. It will be observed that I have purposely omitted any mention of India. At present the White Colonies have no desire whatever to interfere with the affairs of that vast country. They regard it as strictly a dependency of the United Kingdom.

It will be obvious, I think, that something more will be wanted if this small inner Council of the Empire is to do effective work. I suggest that, ancillary to it, there should be set up a permanent committee of advice and enquiry. This body should have its headquarters in London; its duty would be to discuss, thresh out, and report upon all matters remitted to it by the Council of the Empire. Its proceedings would not be public; its reports might be confidential or otherwise at the Council's discretion. It would of course be a larger body than the Council of which it would be a practical and hard-working handmaid. Every effort should be made to keep it free from ornamental personages and from mere show and publicity. As its real work would be to furnish the Council with information and suggestions, there would be no need why it should make any figure before the public. A seat on it, in fact, would only be attractive to men with an appetite for hard work done behind the scenes. Fortunately the Empire has never failed to find such men when they have been sought for. With the aid of such a committee I think the Council of the Empire would quickly be able to gain the confidence of Governments and the respect of English public opinion and of the various self-governing portions of our race. I do not for a moment think that such a Council and such a committee would be a near approach to any federal ideal. But as the fulfilment of the federal ideal is a long way off, and as no approach thereto has been made during twenty-five years of discussion, there is much excuse for a modest suggestion, even though it should wear the appearance of a stop-gap.

[*Contributed by* PROFESSOR T. E. HOLLAND, K.C.]

IT appears to me that the time has not yet come for devising a Council for the British Empire. It is indeed very unlikely that it will ever be found possible to give any legislative powers to such a Council. For consultative purposes, and as a means by which the British Government might keep

in touch with colonial opinion, something of the kind might doubtless render services analogous to those rendered by the gathering of colonial Prime Ministers which took place in London in the year 1902. It would, however, be difficult for men who are political leaders in British possessions to be frequently, or for long periods, in England. Perhaps the Agents-General of the several Colonies might be drawn into some such organisation as is suggested, which might then be brought into close relations, not only with the Colonial Office, but also with the Cabinet.

ENGLISH AND CONTINENTAL MILITARY CODES.

[*Contributed by* J. E. R. Stephens, Esq., *Joint-Author of "The Manual of Naval Law and Court-Martial Procedure,"* 1901.]

Having sat as a member of a large number of courts-martial in the Army, it is my intention in the following pages to set forth as briefly as possible the leading principles of the military codes of England and continental countries with respect to the trial of soldiers by court-martial. I shall make no criticisms on the various systems, nor shall I make suggestions for the improvement of the English military code, for to do so would occupy more space than I have at my disposal. I shall merely state the law as it exists, and not as it should be.

English Military Code.

Military law is a particular rule of conduct prescribed by the legislative authority of the State for the government of the military forces of the nation, in contradistinction to the law which regulates the general conduct of the people in their civil relations. Military law in time of peace did not come into existence until the passing of the first Mutiny Act in 1689. The earlier Articles of War for the government of the Army were of excessive severity, inflicting death or loss of limb for almost every crime. Gradually, however, they assumed somewhat the shape which they bore in modern times, and the Ordinances, or Articles of War, issued by Charles II. in 1672 formed the groundwork of the Articles of War issued in 1878, which were consolidated with the Mutiny Act in the Army Discipline and Regulation Act of 1879, now repealed and re-enacted with some amendment in the Army Act, 1881. The Army Act has of itself no force, but requires to be brought into operation annually by another Act of Parliament, thus securing the constitutional principle of the control of Parliament over the discipline requisite for the Army. These annual Acts afford opportunities of amending the Army Act of which considerable use has been made.

Courts-Martial in the Army.—In the Army there are four kinds of courts-martial—viz., Field-General Courts-Martial, General Courts-Martial, District Courts-Martial, and Regimental Courts-Martial.

A *Field-General Court-Martial* has the same power as a general court-martial, including the power of trying an officer, and is convened in an exceptional way (no warrant being required), and is subject to exceptional rules, under which the procedure is of a more summary character than that of an ordinary court-martial. This kind of court-martial can only be convened on active service or abroad for the trial of offences which it is not practicable, with due regard to the public service, to try by an ordinary general court-martial. If troops are not on active service, the power of convening it is further limited to cases of offences committed by persons under the command of the convening officer, and of offences against the person or property of some inhabitant of, or resident in, the country. It must consist of not less than three officers, unless the convening officer is of opinion that three are not available, in which case it may consist of two; but in the latter case it cannot award any sentence exceeding imprisonment or summary punishment. A sentence of death requires the concurrence of all the members.

A *General Court-Martial* consists in the United Kingdom, India, Malta, and Gibraltar of not less than nine, and elsewhere of not less than five officers, each of whom must have held a commission during not less than three whole years, and of whom not less than five must be of a rank not below that of a captain. A field-general and a general court-martial alone can award the punishment of penal servitude and death, and are the only courts capable of trying an officer, although they can also try soldiers.

A *District Court-Martial* consists of not less than three officers, each of whom must have held a commission during not less than two whole years. A district court-martial cannot try an officer, nor award the punishment of penal servitude or death; the highest punishment this court can award is two years' imprisonment.

A *Regimental Court-Martial* consists of not less than three officers, each of whom must have held a commission during not less than one whole year. The members of a regimental court-martial are not required to be, but are as a rule, all officers of the prisoner's regiment, or attached to it. This court cannot try an officer, nor award imprisonment exceeding forty-two days.

None of these tribunals has the power to try any person unless he is subject to military law as provided by the Army Act. But each of them has, under the Army Act, complete jurisdiction to try any military offence whatever committed by a person so subject to military law, the difference between their powers consisting in the extent of punishment which each tribunal can award, and in the incapacity of the inferior tribunals to try officers and persons in the position of officers.

A commanding officer of a regiment has power without trial by court-martial to sentence an offender to imprisonment with or without hard

labour for any period not exceeding fourteen days, and in the case of absence without leave, for any period not exceeding twenty-one days. A soldier has no right to claim a court-martial except in one case, and that is when the commanding officer proposes to deal with the case summarily, otherwise than by awarding a minor punishment, he must ask the soldier whether he desires to be dealt with summarily, or to be tried by a district court-martial; and the soldier may, if he chooses, claim to be tried by a district court-martial.

A soldier is not only a soldier but a citizen also, and as such is subject to the civil as well as to the military law. An act which constitutes an offence if committed by a civilian is none the less an offence if committed by a soldier, and a soldier not less than a civilian can be tried and punished for such an offence by the civil courts. In order to give military courts complete jurisdiction over soldiers, they are authorised to try and punish soldiers for civil offences—namely, offences which, if committed in England, are punishable by the law of England. They are not, however, allowed to try the most serious offences—treason, murder, manslaughter, or rape—if these offences can, with reasonable convenience, be tried by a civil court. They are, therefore, prohibited from trying any such offence if it is committed in the United Kingdom, or if it is committed anywhere else in the King's dominions, except Gibraltar, within one hundred miles from a place where the offender can be tried by a civil court, unless indeed the offence is committed on active service. Subject to the above exceptions, a military court can try all civil offences of a soldier wherever committed. A court-martial has no jurisdiction to try a person for any offence of which he has already been acquitted or convicted by a court-martial or by a competent civil court. When once an offender has been punished by his commanding officer he cannot be tried by a court-martial for the same offence; and similarly he cannot be punished by his commanding officer or subjected by him to any stoppage for any offence of which he has been acquitted or convicted by a court-martial or by a competent civil court. Although a soldier acquitted or convicted by a civil court cannot be tried again by court-martial, yet on the other hand a soldier acquitted or convicted by a court-martial may be tried again for the same offence by a civil court, but the civil court in awarding punishment shall have regard to any military punishment the prisoner may have already undergone.

When a prisoner is brought before a court-martial, he is asked whether he objects to be tried by the president or any of the officers appointed to form the court. If he does so object, he will be asked to name all the officers to whom he objects, and the grounds of his objection. The prisoner is allowed to have a friend to assist him, who may be either a legal adviser or any other person. If the friend is not a barrister, a solicitor, or an officer subject to military law, he can only advise the prisoner and suggest questions to be put by the prisoner to the witnesses; but if he is a barrister

a solicitor, or an officer subject to military law, he has the same rights as counsel in an ordinary civil court, and can put questions to the witnesses direct, and also address the court. Formerly counsel, though they could appear as advisers either of the prosecution or the defence, could not address the court or examine witnesses orally. All questions are put to the witness direct by the prosecution, prisoner, or judge-advocate, but the witness in replying addresses the court, and not the prosecutor or prisoner. Formerly questions were not put direct to witness, but through the president. The questions are put down in writing by the judge-advocate if there be one, or by a member of the court, or taken down by a shorthand writer, and underneath each question the answer is written. The evidence of every witness must be read over to him before he leaves the court, and he may offer, or be called on by the court, to explain or to reconcile answers which may appear inconsistent. The examination of witnesses is conducted on similar lines to that of an ordinary criminal court. Under the Criminal Evidence Act a person may give evidence on his own behalf if he chooses. After all the evidence has been taken, and the speech for the defence made, the prisoner is marched out, and the court is closed to deliberate on their finding. The court may at any time during the trial deliberate in private, and may either withdraw for that purpose or cause the court to be cleared; but at other times the court must be open, so far as the room or tent in which the court is held can receive them.

The court must consider their finding in closed court, and the opinions of the members are taken in order, beginning with the junior in rank. The court is then reopened, and the prisoner is marched in. If the verdict is one of acquittal, the court pronounce their finding in open court, and the prisoner is discharged. If, on the other hand, the court find the prisoner guilty, they do not state in open court what their finding is, but the prisoner knows that he has been found guilty by the president putting to the prosecutor the question, "Have you any evidence to produce as to the character and service of the prisoner?" If he has, he replies, "I produce this paper, sir; shall I read it?" He then proceeds to read extracts from the prisoner's defaulter sheet, etc., stating how many times before the prisoner has been dealt with by a court-martial or his commanding officer. The prisoner is again marched out, and the court is closed to consider the sentence. The junior member is asked first, and so on in seniority; the majority decide the sentence. The papers are then sealed up and despatched to the confirming authority. A prisoner may not know for several days what his sentence is, for he is not told what it is until it has been confirmed.

The authority having power to confirm the finding and sentence of a court-martial may send back such finding and sentence, or either of them, for revision once, but not more than once, and it is not lawful for the court on any revision to receive any additional evidence; and where the finding

is only sent back for revision, the court has power without any direction to revise the sentence also. In no case shall the authority recommend the increase of a sentence, nor shall the court-martial on revisal of the sentence, either in obedience to the recommendation of an authority, or for any other reason, have the power to increase the sentence awarded (Army Act, s. 54, sub-s. 2). If the court adhere to their finding and sentence, the confirming authority can only either confirm or refuse confirmation. A conviction and sentence are not valid until they are confirmed, and therefore a refusal of confirmation in effect annuls the whole proceeding except where confirmation is withheld wholly or partly for the purpose of referring to superior authority. The confirming authority can, when confirming the sentence, whether after revision or without it, mitigate, remit, commute, or suspend the punishment. After confirmation, the punishment can only be mitigated, remitted, or commuted by the Sovereign.

After the sentence of a district or general court-martial has been confirmed, the papers are forwarded to the office of the Judge-Advocate-General of the Army, where they are perused, and should any illegality in the proceedings be detected, the sentence is quashed, but meanwhile the prisoner has undergone a portion, if not the whole, of the sentence (in the case of a short one), as some weeks must necessarily elapse before the papers can be perused by the Judge-Advocate-General. When the conviction is quashed, the prisoner is reinstated in his former position.

Naval Courts-Martial.—The Navy differs from the Army in that it has only one kind of court-martial, and that is a general court-martial. Naval courts are held on board one of His Majesty's ships or vessels of war, and, like military courts, are open to the public (Adm. Inst. 634). The Admiralty have decided that it would be contrary to this article for a president to allow a case to be tried *in camera*. Ladies might be requested to withdraw, but the court must be to all intents and purposes an open one. If the conduct of any person in the presence of a court-martial be so disorderly as to amount to an interruption or obstruction of its proceedings, the court has power to order him to be excluded from the court, or in glaring cases to commit the offender (whether belonging to the Navy or a civilian) for contempt. The procedure is somewhat similar to that of the Army. The deputy-judge-advocate on a naval court is usually a paymaster. The court must consist of not less than five nor more than nine members. No officer may sit on a court-martial who is under twenty-one years of age. In the Army it is regulated by the number of years' service. All officers present whose rank renders them eligible and whose seniority requires them to attend as members of the court must sit, unless objected to by the prisoner, even though they may be witnesses for the prosecution, and may be fully cognisant of their own knowledge of all the circumstances attending the matter to be tried. If, however, it is determined to call him as a witness, the fact should be notified to the person

to be tried, who alone can, under s. 62 of the Naval Discipline Act, 1866, object to be tried by any particular member or to the constitution of the court.

A prisoner may have a friend (whether counsel, solicitor, officer, or any other person) to assist him in his defence and advise him on all points, and he may suggest the questions to be put to the witnesses and may read the prisoner's defence or statement in mitigation of punishment, but he is not permitted to address the court. Thus it will be seen that counsel acting for a prisoner before a naval court has no more power to address the court than any other person. Formerly this was also the practice in the Army. Any member of a naval court-martial may ask a witness any question without putting it through the president, but the question is recorded as having been asked by the court, and not by the individual officer. Like as in the military courts, the court is cleared for the consideration of the finding, and the junior member records his vote first, the votes of the majority deciding the issue, except in the case of a sentence of death, which is provided for by sub-s. 2 of s. 53 of the Naval Discipline Act, 1866. When on a division the votes are equal, the construction most favourable to the prisoner is to prevail. The members register their votes on the question of punishment in the same manner as they do in the case of the finding; the junior member votes first, the judge-advocate collects the votes; the vote of the majority decides the question. Should the votes of the members vary so considerably as not to give an actual majority in favour of the award of any given punishment, the president calls on the members to revise their votes. Should the votes be equal, the sentence most favourable to the prisoner should be adopted. Judgment of death must not, however, be passed on any prisoner unless four at least of the officers present at the court-martial, where the number does not exceed five, and in other cases a majority of not less than two-thirds of the officers present concur in the sentence. Except in cases of mutiny the punishment of death cannot be inflicted on any prisoner until the sentence has been confirmed by the Admiralty or by the commander-in-chief on a foreign station (s. 53). The sentence of a naval court-martial does not require confirmation, with the one exception of a sentence of death. The sentence is at once proclaimed in open court. This is a much fairer procedure than that adopted in military courts. It is unfair to keep a prisoner in suspense as to his sentence.

Military Law of France.

The *Code de Justice Militaire* contains the law relating to the French Army. Military justice is administered by (1) *Conseils de guerre*; (2) *Conseils de révision*; (3) *Prévôtés*. The *Conseils de guerre*, who judge accused persons, act as a jury, and are also supreme judges of points of fact. The *Conseils de*

révision either maintain or annul the judgments of the *Conseils de guerre* in the same manner as the *Cour de Cassation* of the ordinary law. They are supreme judges of points of law. *Prévôtés* are only established in time of war on foreign territory, and can only judge followers of the Army for certain given offences. *Conseils de guerre* are formed permanently at the chief place in each territorial *circonscription*, others being also formed if required. The general commanding each *circonscription* keeps prepared and corrected to date a list of all officers who can be called to sit on these tribunals. These officers are to be fit by instruction and experience to fill these functions, to be able to sit without injury to other requirements of the service, and to live sufficiently near the place where the tribunal sits. These permanent councils are composed of a president and six judges. The rank of the members varies according to the rank of the accused. To each Council of War is attached an officer acting as Commissary of Government, an officer acting as *Rapporteur* or prosecutor, and one or more clerks.

Permanent Councils of Revision are established in every territorial *circonscription*, their number, seat, and assembly being determined by decree of the Chief of the State published in the *Bulletin des Lois*. They are composed of a brigadier-general as president, and four judges—namely, two colonels or lieutenant-colonels, and two chiefs of battalions or squadrons, or majors. The right of condemned prisoners to appeal to the Court of Revision can be suspended in the armies in the field.

When an army is on foreign territory, the prevosts exercise a jurisdiction independently of their police duties. They can award for infractions of regulations respecting discipline punishment not exceeding two months'; for other offences, punishment of six months' imprisonment. Their decisions are not subject to appeal.

All judgments of the Councils of War can be referred to the Councils of Revision, either by the prisoner or at the request of the Commissary of the Government. The Councils of Revision can only annul judgments in the following cases: (1) where the Council of War has not been disposed according to the dispositions of the Code; (2) where the rules of *compétence* (jurisdiction) have been violated; (3) where the punishment pronounced by the law has not been applied to the facts declared certain by the Council of War, or where a punishment has been pronounced beyond the punishment provided by the law; (4) where there has been a violation or omission of the forms prescribed on pain of nullity; (5) where the Council of War has omitted to pronounce respecting a demand of the accused, or a requisition of the Commissary of the Government, to use a power or a right allowed by the law.

Military Law of Germany.

In Germany no soldier can be tried by a civil court, but is subject to similar punishment by court-martial, and for this purpose a lawyer, called an "auditor," is attached to each division, on whom devolves the duty of expounding the law to the members of a court-martial.

A general court-martial is convened by the officer commanding the division. It is composed of five classes in the case of a private—(*a*) a field officer as president; (*b*) two captains; (*c*) two lieutenants; (*d*) three non-commissioned officers; (*e*) three privates. As the military rank of a prisoner increases, so do the members of the court-martial, class (*e*) representing the rank of the man to be tried. A regimental court-martial is convened by the colonel commanding the regiment, and is composed of five classes under the presidency of a captain. Only privates and non-commissioned officers can be tried by it. In every regiment there is an officer who, like the auditor, collects the evidence and reads it to the members. This officer receives a small increase of pay and has to take an oath to perform the duty allotted to him impartially, etc. The proceedings otherwise are as with general courts-martial.

The evidence is collected by the auditor, in the presence of the prisoner, who can cross-examine the witnesses or have them cross-examined by a friend. An officer is also present, whose duty it is to protect the prisoner's interests while the evidence is being taken. The members then consult together by classes, and give their verdict, which must be unanimous as far as each class is concerned. Supposing the non-commissioned officers and privates vote one way, and the captains and lieutenants another way, then the vote of the president decides the punishment.

In the German Army there is also another kind of court, termed a "Court of Honour." Its object is declared to be to maintain honour, the common heritage of the corps of officers, and that of each of its members.

Military Law of Russia.

Every body of troops whose commander exercises the power of a regimental commanding officer has its regimental court. Every military district has its district court at the district headquarters. The Supreme Court at St. Petersburg hears appeals from the verdicts of the lower courts.

A regimental court consists of a field officer as president; two company officers as members; and a judge-advocate. The commanding officer of the regiment appoints the president for one year, and the members for six months; the names are submitted to the divisional general, who has the right to veto.

Military district courts are composed of the following: President is a general or colonel; permanent members are two field officers and two

military procurators; the temporary members are two field officers and four company officers appointed from regimental officers for six months by the general officer commanding. Officers of the special arms, or of the staff, or of less than eight years' service, are ineligible as temporary members. District courts may try all cases, and may hear appeals from the regimental courts.

The Supreme Court at St. Petersburg is the final court of appeal. It consists of a president and four members, all generals or other high military functionaries. The Judge-Advocate-General is attached to this court. The verdict of Russian courts-martial is signed by all the judges, and at once communicated to the prisoner, who has the right of appeal within twenty-four hours. The verdict must be submitted to the convening officer within three days. He may confirm it, send the case up to a higher court, or increase or reduce the amount of punishment within the limits assigned by law.

Military Law of Italy.

In Italy no person can be a member of a court of enquiry or of a military court under twenty-four years of age. The Military Territorial Tribunal has attached to it a court of enquiry, an officer of high rank to act as instructor, a military judge-advocate, and a defending counsel, either an officer or lawyer. These courts sit at the headquarters of their territorial division, with some exceptions.

The other courts are "The Officers' Tribunal," "The Officers' Tribunal in the Field," and "The Supreme Naval and Military Tribunal." The last-mentioned court has a general of high rank as president, eight actual judges (*i.e.*, three generals, three State Councillors, and two Presidents from the Court of Appeal), and five supernumerary judges (two generals and three State Councillors). It sits in the capital of the country.

Military tribunals, except the discipline commission, are all open courts. The sentence, which is at once made public by the president without further confirmation, must be carried into effect in within twenty-four hours, unless appeal is made to a higher court. The higher courts confirm, quash, or order the case to be sent to another military court to be retried. In the latter case, the Royal Court of Cassation, or Court of Appeal, is the court implied.

CLASSIFICATION OF FORMS AND CONTRACTS OF LABOUR.

[*Contributed by* Sir John Macdonell, C.B.]

It has been thought expedient to describe some of the classifications of labour. The enumeration or description of them may show, among other things, that with the growing complexity of the economic organisation classifications once convenient become unsuitable. It may also show that economists, statisticians, and lawyers, to name the three kinds of enquirers most interested in this matter, experience similar difficulties in applying old classifications and divisions to present facts.

Modes of Classification.—It is convenient to divide contracts of labour in different ways according to the purpose of the investigation. They may be divided historically, *i.e.* according to the order in which they appear; according to the divisions adopted in different systems of law; or according to the divisions suitable for the purposes of the economist or statistician. The golden rule of classification is, no doubt, to place together in the same classes things possessing in common the greatest number of attributes. But the attributes of interest for the economist or statistician are not always of equal interest for the lawyer. Then, too, the relations of employers and employed may wholly change; a classification once useful may become obsolete.

The first distinction which economists recognised was that between productive and unproductive labour. They differed greatly as to what should be included in either category; they agreed in thinking that the only division of importance. But in considering the law of wages, economists were obliged to make a number of other divisions. The older writers on Political Economy, dividing society into capitalists and labourers, included under the latter all classes of workers, skilled and unskilled, mechanical or intellectual. Later writers, aware of the defects of this classification, have subdivided "labourers" into various groups. The following are some suggested classifications:—

MR. MILL.	MR. GIDDING.	MR. TAUSSIG.	MR. HOBSON.
1. Professional classes	Responsible workers		Routine
2. Highly skilled labourers	Automatic workers	Hired labourers	Mental
3. Lower classes of skilled labourers	Responsible manual workers	Independent labourers	Artistic
4. Unskilled labourers			
b. Dependent			
c. For work generally		Independent for special job	Intellectual

Dr. Bücher, in his article on "Gewerbe" in Conrad's *Staatswörterbuch*, divides the various kinds of labour into—

5. (1) Hauswerk; (2) Lohnwerk; (3) Handwerk (*i.e.* Preiswerk); (4) Verlag (Hausindustrie); (5) Fabrik. M. Leroy-Beaulieu (*Précis d'economie Politique*, p. 29, ed. 1894), classifies them thus: (1) Extractive Industries (Mining, etc.); (2) Agricultural; (3) Manufacturing; (4) Commercial; (5) Transport; (6) Immaterial services (see Mr. Mill's division, *Political Economy*, Book I. c. 2).

Political economists also found it expedient to distinguish services performed by persons who sell their labour incorporated in commodities from various kinds of personal services, *i.e.* services performed directly without being incorporated in commodities. One classification of the latter kind is: (1) Services connected with justice and administration; (2) the clergy; (3) public teachers; (4) the army and navy; (5) lawyers; (6) private teachers; (7) artists; (8) household servants personally engaged; (9) such servants (washerwomen, for example) as are not personally engaged in households; (10) miscellaneous. Modern economists are also familiar with a distinction which is of growing importance, that between the labourer, the capitalist, and the *entrepreneur*, or "undertaker." Clark (*The Distribution of Wealth*, p. 3) points out that the whole annual gains to labour distribute themselves into three great sums—general wages, general interest, and aggregate profits; those are, respectively, the earnings of labour, the earnings of capital, and the gains from a certain co-ordinating process that is performed by the employment of labour and users of capital. "This purely co-ordinating work we shall call the *entrepreneurs'* functions, and the rewards from it we shall call profits." Somewhat similar is another distinction which I describe in the words of a well-known writer: "Industrial London is to a great extent composed of those who have returned themselves as neither 'employers' nor 'employed.' . . . They often rely for their employment, such as it is, on certain members of the community with whom not even a personal relation is maintained. Among cabmen there are no

employers in the ordinary sense." (See Booth's *Life and Labour in London*, 7, 289).

Of late there has come into use here and in France the expression "undertakers," and *entrepreneurs* in a somewhat different sense—they are "contractors," *chefs d'entreprise*, or persons who undertake some part of, or subsidiary duty in connection with, the main work.

The Multiplication of the Divisions of Labour.—Writers on statistics who desire to make an exhaustive classification of the various occupations, have been obliged to multiply prodigiously the classes and subdivisions of employments; while the first divisions were only a few, the modern run into thousands. (See "Die Internationale classificierung des Berufsarten," *Bulletin de l'Institut International de Statistique*, 7, i. 153; also "Berufs und Gewerbestatistik," *in Handwörterbuch der Staatswissenschaft*, Supplement 202). Let me mention one fact: In the *Gewerbestatistik* of Germany for 1892 there were several thousands of divisions. Those who desire to see how the simple enquiries in the early censuses into the principal professions have been expanded and extended into investigations of the subsidiary occupations or professions, will find the subject discussed in M. Antoine Vizaknoi's paper in the *Bulletin de l'Institut International de Statistique* (13, p. 369), on recent censuses from social and economic points of view.

Before considering the divisions which are of importance in law, one general observation may be made. The history of the subject is, in the main, the history of attempts, by interpretation, analogy, and legislation, to adapt, expand, and modify divisions suited for and originating in one industrial system to an order of things wholly different.

Before mentioning the divisions recognised in English law, it may be well to describe some distinctions prominent in other legal systems.

Classification of Labour in Roman Law.—Many of them are based on the Roman law. The bulk of the work performed in modern times by labourers and artisans was in ancient Rome done by slaves, who were let out by their masters. Their *operæ*, or *fructus*, were viewed in much the same light as the produce of machines, tools, hands, etc., let out to hire.[1] Labour by freed men was common; and it was often an implied term of emancipation that the slave should perform certain services for his former master. In the *Digest* are references to some of the problems which now occupy our Courts. But, for the most part, Roman lawyers dealt with questions as to work and labour which are now of little importance. The texts relating to the rights and duties of masters as to wages and hours of work are brief, few, and imperfect. In Roman law the hiring of land and the law of master and servant are alike treated under the head of *locatio-conductio*. Contracts for the labour and service of freemen

[1] Endemann, "Die Rechtliche Behandlung der Arbeit," *Jahrbücher für Nationalökonomie*, 67, p. 641. See also "Die Wirtschaftliche Entwickelung des Altertums," by Eduard Meyer.

for reward fell under the subdivisions—*locatio-conductio operarum* and *operis*. As the landlord was the *locator* of a farm and the lessee the *conductor*, so the servant was the *locator operarum*, and the master the *conductor operarum*. If a workman had to do something in respect of goods or chattels supplied to him—*e.g.* if he had to weave materials into cloth—he was called *conductor operis*, and the owner of the materials was *locator operis*. Another peculiarity of Roman law arising from the prevalence of slave labour was the distinction between *operæ illiberales* and *operæ liberales*; the former being the subject-matter of a contract *locatio-conductio operarum*, the latter not. According to Roman law—and the same is true of some modern codes—the contract of work and labour was treated as *locatio-conductio* or *mandatum*, according as the service was menial, mechanical, or intellectual, remunerated or gratuitous. It is almost needless to say that this was an artificial way of dealing with the matter; at all events, one not suited to modern relations of master and servant, employer and employed.

The employment of slaves might be treated as a form of hiring; so, too, might the employment of servants bound to conform to the orders of a master. But in substance contracts of work or labour do not come within this description. In the case of hiring, strictly so-called, that which is hired is returned—it is a case of *res utenda datur*; in the other there is no return; it is a case of *res facienda datur*.

Now, as M. Renouard remarks, "L'artifice du langage peut réunir les deux louages en une même phrase, mais ne saurait créer entre eux une réelle et parfaite assimilation." The same writer points out that the tendency is to substitute for "louage de service" the phrases "prestation de services," and "contrat de travail," and to distinguish between "patron" and "entrepreneur." The above legal theory, out of harmony with obvious facts, may be compared with a theory as to contracts of labour once prevalent among economists: that which treated labour as a "commodity" or particular kind of merchandise, and, in disregard of important differences, assimilated hiring to sale.

—— **in French Law.**—The highly artificial classification of Roman law is maintained in system of law based on the Civil Law. The French Code Civil is curiously imperfect as to contracts of service. It contains no such phrase as *contrat de travail*, which is viewed as a subdivision of the *contrat de louage*. The Code deals chiefly with two classes of contracts—*locatio-conductio operarum*, and *locatio-conductio operis*.

The Code also mentions *les maîtres* and *les commettants*; and modern French legislation recognises some new distinctions—*e.g.* *ouvriers*, *employés*, *chefs d'entreprise*, or *chefs d'industrie*.

The classification of Roman law is preserved in Scotch law; and it seems to have led to the borrowing from the law of landlord and tenant of

certain rules and applying them to the law of master and servant. Probably the doctrine of *tacit relocation* has been carried to a degree which would not have been done if Scotch judges had not had the decisions in regard to landlord and tenant present to their minds. This classification is to be found in some modern Codes—*e.g.* it is found in the Code of Louisiana, (see III. 9, 1), though the relation of master and servant is also dealt with under head of "persons" (I. 6).

—— in **Swiss and German Law.**—The Swiss Code of Obligation (Titles XI., XII.) divides such contracts into *louage de service*, and *louage d'ouvrage par suite de dévis ou de marche*, the former being contracts of personal service, the latter contracts to perform certain work or labour. The German Code (s. 611) divides contracts of labour as follows: *Dienst vertrag* — contracts of service; *Werkvertrag* — contracts of work and labour.

—— **in Japanese Law.**—The Japanese Civil Code of March, 1896, divides such contracts into two classes: hire of labour and services, and contracts for the execution of specified work (Book III. ss. 8 and 9).

—— **in English Law.**—The following are some of the classifications of labour adopted by English legal and economic writers:—

BLACKSTONE	REEVE	KENT
1. Slaves	Factors	Slaves
2. Menial servants	Brokers	Hired servants
3. Apprentices	Attorneys	Apprentices
4. Hired labourers	Agents generally	
5. Servants *pro tempore*		

Some of these divisions are of little legal importance. On the other hand, certain statutes specially relate to some of those divisions, while others are regulated by special customs.

No system of classification of contracts of labour is suited for all systems of law, and at all times. The most convenient classification is that which best answers the particular purposes in hand. At present, owing to the great diversity of the questions discussed, several classifications are useful. But for most legal purposes the various contracts of work and labour may be classified with reference to three kinds of questions: (*a*) questions between employers and workmen—*e.g.* as to wages, hours of work, notice, duties to obey, etc.; (*b*) questions between employers and third persons as to liability for acts of servants; (*c*) questions; as to duties imposed by the Legislature with respect to certain trades or professions.

Some Typical Divisions.—The following divisions of contracts of work and labour are among the most useful and important :—

(*a*) *According to the nature of the work.*

(i) Domestic or menial servants, as distinguished from other servants.

(ii) Manual and non-manual labourers.

This division is of importance in construing certain statutes. It has been held that the Employers' Liability Act, 1880, does not apply to persons not engaged in manual work (*Morgan v. General Omnibus Company*, 13 *Q.B.D.* 832; *Bound* v. *Lawrence* [1892], 1 Q.B. 220). So, too, under the Truck Act, 1831, it has been held that "artificer" means a person engaged in manual work.

(*b*) *According as the workers are engaged in small or great industries*; according as they work at home or in factories or *usines*; a distinction of importance as to Factory and Workshop Legislation.

(*c*) *According to modes of payment.*

(i) Payment by time, or, as it is sometimes called, the day's work plan. In agreements of this kind, is sometimes a term that the day's work shall exceed a certain minimum.

(ii) Payment by piece work; the workman is paid in proportion to the work done. The piece work may be collective or group piece work, the job being given to a group of workmen. In dockyards men may be paid according to the amount of work done, or according to the weight of material worked into the ship. (Labour Commission Evidence, 3, p. 366).

(iii) Profit-sharing workmen are paid wholly or partly according to the profits of the employer. Three legal questions often arise as to this contract: whether the recipients of profits are partners; whether the share is a mere gratuity; and whether the workman is entitled to an account as to profits.

(iv) Wages paid according to sliding scale. Workmen are paid according to an amount which varies with the selling price of the product. For example, under the South Wales Sliding Scale, "the standard of wages upon which future advances and reductions are to be made shall be the general rates actually paid at the respective collieries for the month of December, 1879, and such wages shall be equivalent to a standard average nett selling price of 7*s.* 10¼*d.* and under 8*s.* per ton."

(*d*) *According to the amount of control exercised by the "master," "employer," "undertaker," "entrepreneur," etc.*; a distinction of prime importance in questions of liability for tortious conduct.

(i) Contracts of master and servant strictly so-called; A being paid by B and bound to obey his orders as to the manner of doing work.

(ii) Contracts for exclusive personal service, but without control; A contracts to do work for B, and for no other person, but is free to do the work in the manner he pleases. This is for some purposes a contract of master and servant.

(iii) Contracts to perform a certain work, no control being exercised by the employer; *locatio-conductio operis faciendi* of Roman law, and the *werkvertrag* of the German Code.

(iv) There is a large group of cases in which the servant of one person is for a time, long or short, under the control of another, or, as the phrase is, "lent" to another; cases in which the owner of property parts with the possession and control of property on or about which his servants are engaged. The most common case is where the owner of a ship "demises" it to a charterer. It is clear that, if the owner parts entirely with the control of the vessel, the master and officers cease to be the servants of the owner, in the sense that he is liable for their acts, *e.g.*, for contracts or torts; and it matters not whether the person dealing with the ship had notice of the charter. "No doubt," says Lord Watson, "when a shipowner who enters into a charter party without parting with the possession and control of his ship seeks to limit the powers assigned by law to his captain, the limitation will be altogether ineffectual in any question with shippers who are ignorant of the terms of the instrument. I know of no principle or authority which requires that notice must be given when an owner parts, even temporarily, with the possession or control of his ship in order to prevent the servant of the charterer from pledging his credit."

(v) In another class of contracts the chief facts are these: A hires the property of B; B's servants are engaged on or about that property, and B retains the control of his servant; in other words, there are the facts of *Laugher* v. *Pointer*, *Quarman* v. *Burnett*, and *Jones* v. *Corporation of Liverpool.*

(vi) Contracts by A, an employer, with B, under-employer, for the performance of certain work by B, A exercising no control over B or his workmen. In some of the earlier cases there was a tendency to regard the servants of A and B as being in a common employment (*e.g. Woodhead* v. *Gartness Mineral Co.*). But the decision of the House of Lords in *Lindsay* v. *Johnson* ([1891] A.C. 371) has put the law on a proper basis. In that case H contracted to build a block of artisans' dwellings in accordance with specifications, which provided for fireproof floors, etc., being supplied by L. J, a workman paid by H, was injured by the negligence of a servant in the employment of L. The House of Lords held that the two servants were not in a common employment. "Unless the person sought to be rendered liable for the negligence of his servant can show that the person so seeking to make him liable was himself in his service, the defence of common employment is not open to him." (Lord Herschell, p. 377.)

(vii) Contracts similar to the above, except that A has under the contract certain rights of control over B or B's workmen. Sometimes the rights of A are so large that it is clear the servants of B are for purposes of liability to third persons servants of A. Again, there may be a power of

dismissal of the contractors' servants without any power of control, as in *Reedie* v. *London & North-Western Railway Co.* Sometimes the extent of the interference is such that it is doubtful whether the relation is not that of master and servant.

(*e*) *Combined work or single work.* Many modern industrial operations require the co-operation of several employers and workmen; employers may contract with workmen as if they were employers, or two or more employers with their workmen may combine for the execution of a certain work or undertaking. I have already mentioned some examples of such combination. But in further illustration of the complexity which may exist, I may refer to the course of business described in *Budgett* v. *Binnington*, as to unloading a vessel laden with grain (25 Q.B.D. p. 320). Vessel was unloaded by (A) consignees and shipowners (B). A part of the work was undertaken by the Bristol Docks Committee, C, who employed stevedores (D), while B employed another firm (E). The "bushellers," who put the grain into the sacks, were employed by A; the winchmen were employed by B; the bearers-in by B, the weighers by A, the talleymen by A and B, the landers by A, the foreman by B.

(*f*) *Collective Contracts or Individual Contracts.*—"Collective contract" is much used in economical literature, and it is making its way into legal literature, especially in France. The phrase is used somewhat loosely, but generally to describe the fact that, instead of the employer making a series of isolated contracts, he makes an agreement as to the rate which workmen of a particular shop, group, or class are to be paid. M. Raynaud, in his work on *Le Contrat Collectif de Travail* (p. 2), gives the following definition of it: "Le contrat collectif est un contrat de droit commun, soumis aux règles ordinaires des contrats, portant sur les conditions du travail, et passé entre un patron ou groupement professionnel de patrons d'une part et des ouvriers réunis en syndicat ou en tout autre groupement passager d'autre part, avec ce caractère particulier que les conditions stipulées profitent les plus ordinairement à des collections des individus." Elsewhere M. Raynaud describes this contract as "une stipulation pour autrui," which may be enforced by the syndicates representing the working men. "Nous avons trouvé dans l'analyse de l'acte passé entre le syndicat et le patron tous les éléments de la stipulation pour autrui interpretée du sens large avec la jurisprudence moderne. En second lieu, cette theorie explique et justifie parfaitement l'action du syndicat en exécution du contrat" (p. 282).

So far the collective contract (which may be said to have originated in England) has, according to our law, no special importance. It is regarded as so many separate contracts. No associations with powers corresponding to those given to syndicates in France by the law of 1884 exist here. So far only a few economists (notably Mr. Sidney Webb), and still fewer lawyers, in this country have realised the importance of the collective contract

and its consequences. In English law, especially as to procedure, there are at present difficulties in the way of its development. But note must be taken of the strong belief of some economists and lawyers that it is the labour contract of the future, and the best guarantee against strikes; "le moyen pratique et pacifique de traduire lentement dans le domaine des faits une bonne partie des aspirations sociales les plus légitimes de la démocratie."

"OBEAH" IN JAMAICA.

[*Contributed by* S. Leslie Thornton, Esq.]

Since "time whereof the memory of man runneth not to the contrary," enactments have, I believe, existed in the Statute Book of the Colony whose object has been the suppression of the practice of "obeah." To some extent such legislation has been ineffective, because even now obeahmen abound in every part of the island; but though they are still numerous, they have been compelled to confine their energies to more prosaic purposes than their predecessors, and to carry on their nefarious practices with less danger to the community.

Waning Influence of the Obeahman.—The mystery and dread that in the past attached to the practices of the former masters of the craft—for it is rather a craft than a cult—have very largely disappeared. Though in the country districts to this day there are some old inhabitants, white as well as black, who can curdle the blood with tales of cold-blooded poisonings and mysterious disappearances, or fire it with tales of passion in the pursuit of which the aid of the obeahman had been invoked, the age of the obeahman, like that of chivalry, has passed. In its place to-day the obeahman's performances are rather grotesque than awe-inspiring, and he lives by his wits at the expense of his ignorant and phenomenally superstitious black and coloured neighbours. The present attitude of the native mind towards obeahism is peculiar. Like the small child in the dark, who says to himself he is not afraid, and laughs at the thought, but yet flies in a panic of terror at any sudden or unaccustomed noise, so does the Jamaican regard the obeahman. He is ready to laugh and jeer at his pretensions, and even eager to report him to the police, but deep down in his heart he has a holy terror of his powers.

Causes for this Decline of Influence.—There are many circumstances that have contributed to this change in the public estimation of the obeahman. The spread of education has no doubt done something. A new generation has come into being—a generation which never knew the old high priests of the craft, who brought their mysteries and knowledge of drugs and poisons directly from Africa. Most if not all the old knowledge has been forgotten, and the professors of to-day, though perhaps blacker, older, and uglier than their neighbours, have lived their lives

with them, and have acquired but little knowledge out of the ordinary. Probably the most effective cause has been the establishment by Government of duly qualified medical men in every district of the island. The knowledge that every suspicious death would assuredly lead to a public investigation by one of these medical officers, has most effectually checked the dangerous and murderous element in an obeahman's proceedings. In consequence he has turned his energies towards influencing the minds rather than the bodies of his subjects, for such actions leave little or no trace. To that extent his character has lost much of its former awe and influence, and his craft has degenerated into a trade which attracts every charlatan or knave, who knows it is easier to gain riches out of the superstition and gullibility of his countrymen than by the sweat of his brow. It is moreover not by any means confined to the male sex.

Obeahman regarded as in League with the Evil One.—Regarded by those who believe in him as a sort of go-between between them and the Evil One, the obeahman is usually nowadays only applied to when his clients are anxious to accomplish some unlawful desire, or to be relieved from some evil which a personal enemy has induced the Evil One to inflict on them. A common occasion on which resort is had to an obeahman is when there is some pending litigation, civil or criminal. In such cases one of the parties approaches the obeahman with the view of getting him to exert his influence over the other party or his witnesses, or even the police or the judge, and so to bring success to his side. Some unmeaning ceremonies are solemnly gone through, a little gibberish talked, and after some special instructions suited to the needs of the case are given, the obeahman takes his fee. The real and only sufferer in these proceedings is the unfortunate client who is thus fooled out of his money. The extraordinary feature of the matter is, that no amount or succession of failures to achieve his purposes ever appears to detract from the obeahman's reputation. Belief in these men is not shaken even where they are themselves prosecuted and convicted. Though repeatedly the people see obeahmen unable to save themselves from conviction and exemplary punishment, none the less do they still believe in their power to save them under similar circumstances. Frequently where the prosecution of an obeahman is proceeding, the excited hush of the crowded court, and the demeanour of the witnesses, who appear to be afraid to raise their eyes to the accused, and to be overwhelmed in confusion, when questioned by him, show beyond a doubt the widespread and real fear the people entertain for his powers.

Obeahman Employed to Pervert Justice.—A typical case of this kind came recently before me in which the story told was as follows: A young man who had broken into a shop of a neighbouring village went to an obeahman named Clarke to get him out of his trouble, and to prevent the police from catching him. Clarke told him not to fret at all, and that

he would give him something so that the police shouldn't catch him. The young man then stated that "Clarke took down a paper parcel and threw something from it over my head. It was something like fine ashes. He was jumping about and speaking in a language I didn't understand. He told me to jump, and while he jumped I jumped too. He then gave me a canister of water to put to my nose and say 'God save the Queen.' I did so. He gave me then a black powder to put in the water I drank and the food I ate. He said it would carry away the policeman who caught me. I paid him two shillings. He also gave me a tin of water to throw away at the cross roads."

Employment as a Healer of Diseases.—In spite of the greater diffusion of knowledge and the presence of qualified medical men within call, in many of the country districts, and even in some of the towns, sickness is frequently regarded as due not to natural causes, but to the influence of some grudgeful neighbour exercised by the means of some obeahman. In particular is a supernatural malign influence suspected in cases of epilepsy or insanity, which unfortunately are very prevalent in the island. To put a "duppy" or an evil spirit upon a person is the commonest form in which an obeahman is credited with exercising his power; and as he is believed to be able to put a "duppy" on a person, so it follows that another of the trade has to be called in to exorcise the "duppy" so called into being. It is difficult in these cases to say whether the obeahman professes to act as a person in league with the Evil One, or rather as a medicine-man or ignorant quack. He frequently prescribes decoctions, usually harmless, of his own brewing from the native herbs that grow in the bush round his hut, as part of his treatment, but it appears to be essential in all cases that certain absurd ceremonies and incantations should be gone through; and it is to these latter rather than to the medicines that the patient looks for his cure.

As illustrations I may perhaps be allowed to quote one or two cases that have recently come before myself. In the first of these a man named Spence went to consult an obeahman on behalf of his brother. He said: "I told him that my brother had been carrying a corpse and the next day his hand had swelled up very much. Bennett (the obeahman) went into his room and brought out a little bag, from which he took out a pack of cards. He made me put two shillings on the cards and draw one, while he looked in a mirror. I drew the five of clubs. Then Bennett said my brother had not got a strain, but 'the whole total' of 'the dead,' and that it would take him nine days to die same as the other man. He said it was not too late, because four days were left (five days having passed since my brother had carried the corpse). He told me there was a duppy on my brother, and unless taken off he could not get better, and offered to get him better for a guinea. I paid him ten shillings. Then he directed me to go to the town and buy oil of origanum, 3*d.* worth of oil of thyme, 5*d.* worth of rosemary, 1½*d.* worth of castile soap, and 2*d.* worth of garlic,

with a pint of proof rum. He also gave me a bottle with some stuff in it to rub my brother's sides with. I was to use my right hand to rub his right side, and my left his left side, the same as they washed the corpse, but I was to be very careful not to touch his back with it or he would die."

Before, however, the ingredients asked for by the obeahman were supplied to him, the police interfered and the obeahman was arrested, so that his further proceedings must remain untold.

In another case a Mrs. W., who occupied a higher position in the social scale, was recommended, as the doctors had not been successful, to consult an obeahman named Williams. Her two daughters, who were grown up, had recently been suffering from a sort of mad-sickness (probably hysteria), so on April 30th Mrs. W. sent for Williams. He came, examined them, passed his hand over their faces, gave them a little scallion tea, and said there were duppies on the young women, but that he would get them better, and took them to his dwelling. Mrs. W. saw him next on May 4th, when he told her she must give him £4 to send to Kingston for two pints of holy water. This she did. On the night of May 10th he came to her house with another man named Samuels with the two pints of holy water. He then asked Mrs. W. for £2 more before he could go on with the work—and Mrs. W. gave him the money, which he put in a glass, pouring water and rum on it. Then he set fire to the rum. After doing this he showed Samuels where to dig a hole. Samuels dug one hole at the back of her room in the house, and Williams then laid one of the bottles of holy water in it. The same was done with the other pint, which Samuels buried in the front of her house. Williams then said this would keep away duppies, and prevent them from entering over the threshold any more. A week later Williams sent her back her daughters saying they were perfectly better; but a few days after they became ill again.

Cruelty and Violence, Use of.—In some instances violent measures are adopted, and the patient is made to undergo cruelty of the worst description. It was not so very long ago even in England that persons suffering from lunacy or epileptic seizures were exposed to treatment with a view to their cure which we should now regard as shocking cruelty; and a very recent horrible case in Ireland will be in the recollection of most of my readers. Servius the grammarian, Montaigne tells us, being troubled with the gout, found no better means to be rid of it than to apply poison to mortify his legs. Very similar to this was the cure prescribed and carried out recently in the case of a young woman, who was suffering from yaws in her feet, in the parish of Clarendon in this island. Here the girl was made to put her feet and legs in hot ashes, and to keep them there until most of the flesh was consumed—a process which subsequently led to the mortification and consequent amputation of both her legs. It was, however, the advice of some old village crone which in this instance led to this terrible result, not that of an obeahman.

A gruesome case now under investigation affords an extreme illustration of the obeahman's mode of treatment in cases of this nature. The orginal statements on which the police took criminal proceedings, bald as they are, will tell the story better than any description of my own.

James Bailey stated: "I am living at Brighton in the parish of St. Elizabeth. On September 6th my sister Sarah Bailey complained for a severe pain in her head and that two women duppies were with her. She ran out the house into the brush. Finding that Sarah's sickness was increasing, I enquired and heard that Mrs. Tyson at St. Johns in Westmoreland parish can take off duppies. I took my sister there on September 10th, accompanied by her sister Catherine, Joseph Thompson, with whom Sarah lived, and Sonnie Samuels. Mrs. Tyson asked me, 'What is the matter with the girl?' I replied, 'She is sick with pain in her head,' and she say that two women duppies are on her. Mrs. Tyson replied, 'I will get her better if you pay me 12*s*.' I consented, and paid her the 12*s*. Then she sent Thompson to a shop to buy a white pocket-handkerchief and a vial of ink and a quart of fine salt. When Thompson came Mrs. Tyson opened the vial of ink and poured it down Sarah's throat, then take the salt, scrubbed her head, face, and the bottom of her feet with it, and said, 'The ink and salt will make the duppies leave your sister." Before doing this Mrs. Tyson and a tall man named Pa-Pa flogged my sister severely in the head and all over her body with some green lime and redwood sticks about the size of my finger and about a yard in length. Mrs. Tyson flogged her first, then Pa-Pa second. They flogged her about ten times five each. The sticks were cut by Pa-Pa. They tell me that the flogging would take off the duppy and cure Sarah. Whilst Mrs. Tyson and Pa-Pa flogging Sarah, they wet her with water. They did not take off her clothes after she was flogged. I saw several bruises on her hands. Whilst Mrs. Tyson was flogging Sarah so severe, I went in the midst, to stop her, but several persons who came there to Mrs. Tyson said that it is the same she do with everybody, so I did not trouble her. Mrs. Tyson did not take the wet clothes off Sarah. They remained on her till I left on September 12th. Mrs. Tyson and Pa-Pa again flogged Sarah on September 11th. She gave her about eight floggings and wet her during the day and night. I left on September 12th. I saw Mrs. Tyson give Sarah some medicine out of a pint bottle on the 10th. I don't know what sort of medicine. Thompson returned on the 14th, with a message from Mrs. Tyson to me. In consequence I and Thompson and Samuels went back to St. Johns on September 17th. I saw Sarah sitting on the floor in Mrs. Tyson's house. She looked excited and weak. She could not help herself to put on her clothes. Thompson assisted her. Mrs. Tyson said to me, 'The girl is all right; you can take her home.' We left St. Johns about 8 a.m. on September 18th with Sarah. She walked. When she reached Hopeton, about seven miles from St. Johns, Sarah felt very weak and sat down. I left to get some

men to take her home, but when I came back I saw Sarah at Newport, about two and a half miles from Hopeton. Thompson was with her all the time. I took Sarah from Newport to Brighton in a stretcher. She grew worse after we reach home. She could not take anything to eat or drink, and continued in that condition until she died about 4 p.m. on September 23rd. She had not seen a doctor. She was always a strong hearty girl. She is about twenty-two years old. Whilst Mrs. Tyson and Pa-Pa were flogging Sarah they spoke some language that I don't understand called 'unknown tongue.'"

Robert Samuels, while telling the same story, adds that after the payment of the 12*s*. "Mrs. Tyson took up a Bible and read it. After that, they sing, and whilst they were singing Mrs. Tyson began the flogging. After the flogging they put her (Sarah) in the sun to stand from about 12 noon until about 4 p.m. . . . On September 14th Mrs. Tyson sent Thompson to buy a tin of blacking. She and Pa-Pa took it and blacked Sarah's face with it, giving her some to eat. On the night of September 15th Mrs. Tyson called Sarah to prayer. She was stubborn and would not move. Mrs. Tyson and Pa-Pa held Sarah by her feet, turned her head down, and dropped her on her head, and wet her. Whilst Mrs. Tyson wetted her Pa-Pa placed one of his feet on her neck to keep her down. After they wet her, they left her same place lying on the floor until next morning."

From Thompson's and Catherine Bailey's statements, which corroborate the previous statements, it may further be gathered that for the purposes of the flogging and other treatment Sarah was tied by a rope round her waist to a post in the yard.

The doctor who made a postmortem examination on the body of Sarah Bailey certified that her death was due to "physical prostration resulting in exhaustion and gradual heart failure." He also testified to finding all the chief organs of her body in a healthy and normal condition, but that she was in a very emaciated state, covered in all parts of her body and limbs with the marks of old bruises and cuts, with a scar across the front of the neck, all having the appearance of having been inflicted some days before his examination.

I have given the facts of the case somewhat at length, as the statements show not only by what they state, but also by their omissions, the credulity of this unfortunate girl's friends, who no doubt were actuated with the best intentions towards her, as well as the horrible cruelties which were practised —cruelties which reduced a strong and hearty young woman of twenty-two in less than a fortnight to a death of exhaustion.

Other purposes for which the services of an obeahman are requisitioned are those in which some supernatural aid or protection is needed to ensure success in some lawful object. I remember one case in which an obeahman was asked to ensure a man's horse winning a race that it was being trained for. The measures recommended, however, after the fee was paid, were so

absurd that the owner of the horse became indignant, and instead of following them reported the rascal to the police. In another the obeahman advised a young woman how she could get married to the gentleman she wanted. In the same way he is constantly being called in to advise how best a man's growing crops can be protected from the depredations of the prowling thief. In many a provision or vegetable ground I have seen suspended from a tree an old pint bottle, containing probably dirty water, or placed on the ground an old tin with some such relic in it as a bone or a rag. It seems hardly credible that the thieves, who in spite of possible duppies and other terrors of the darkness will venture out on a marauding expedition, will be deterred by any such trumpery expedients; but there is no doubt they have a wonderful efficacy. When some years back I was on a visit to Grenada, where obeahism was apparently quite as rife as in Jamaica, a magistrate there seriously assured me that his small cocoa plantation was systematically robbed until he had somewhat ostentatiously called in the aid of a local obeahman. This professor solemnly perambulated through the plantation, hung up a bottle of rainwater here and there, invoked curses and other evils on any future thief, and from that moment the depredations ceased.

Not many years ago the obeahman's aid was commonly invoked by persons to expel from a given locality or some appointment some person who was obnoxious to them. The methods then adopted were frequently of a dangerous and mischievous character, involving often the wholesale poisoning of stock, or even the obnoxious person himself. Of late years, however, I have heard of no such case.

Law on the Subject.—By way of conclusion to this short paper it may be interesting to set out the provisions of the existing law in Jamaica on the subject. They are short and are as follows. After formal parts the Law goes on as follows:—

S. 3. In this Law, unless the context otherwise requires—

"Obeah" shall be deemed to be of one and the same meaning as "myalism";

"A person practising obeah" means any person who, to effect any fraudulent or unlawful purpose, or for gain, or for the purpose of frightening any person, uses or pretends to use any occult means, or pretends to possess any supernatural power or knowledge; and

"Instrument of obeah" means anything used or intended to be used by a person, and pretended by such person to be possessed of any occult or supernatural power.

S. 4. Every person practising obeah shall be liable to imprisonment with or without hard labour for a period not exceeding twelve months, and in addition thereto, or in lieu thereof, to whipping:[1] Provided always that such whipping shall be carried out subject to the provisions of 28 Vict., c. 18, and 29 Vict., c. 7, and be inflicted at a place to be named by the resident magistrate making the order. (Further provisions as to whipping follow, but may here be omitted.)

[1] By s. 3 of Law 8 of 1903 a person convicted under the Obeah Laws may be subjected to police supervision.

S. 5. Whoever for any fraudulent or unlawful purpose consults any person practising obeah [or any person reputed to be a person practising obeah, or reputed to be an obeahman, or any person who has been convicted of any offence under any Law relating to obeah, or any person pretending to possess supernatural powers, [1]] shall be liable to imprisonment with or without hard labour, for a period not exceeding six months; and in addition thereto, or in lieu thereof, to whipping, subject as regards such whipping to the proviso contained in s. 4 of this Law: Provided that nothing in this Law shall be deemed to authorise the infliction of a sentence of whipping on a female.

S. 6. Whoever, for the purpose of effecting any object, or of bringing about any event by the use of occult means or any supernatural power or knowledge, consults any person practising obeah [or any person reputed to be a person practising obeah, or reputed to be an obeahman, or any person who has been convicted of any offence under any Law relating to obeah, or any person pretending to possess supernatural powers,] and agrees to reward the person so consulted for such consultation, shall be liable to a fine not exceeding £50, or to imprisonment with or without hard labour for a period not exceeding twelve months.

S. 7. Whenever it is made to appear upon oath that there is reasonable cause to suspect that any person is in possession of any instrument of obeah, it shall be lawful for any justice of the peace by warrant to authorise any officer of constabulary, constable, or rural policeman to enter and search any place, either in the day or in the night, and if any instrument of obeah is found in any place so searched, to seize and bring it before him to be secured for the purpose of being produced in evidence in any proceedings before any Court of Justice in which it may be required.

S. 8. Whenever upon any such search as aforesaid any instrument of obeah is found, the person in whose possession it is found shall be deemed, unless and until the contrary is proved, to be a person practising obeah within the meaning of this Law, at the time at which the instrument of obeah was so found.

S. 9. It shall be lawful for any officer of constabulary, constable, or rural policeman to arrest without warrant any person practising obeah.

S. 10. If any person shall compose, print, sell, or distribute any pamphlet or printed matter calculated to promote the superstition of obeah, he shall be guilty of an offence against this Law, and shall be liable to a penalty not exceeding £30, or in default to imprisonment with or without hard labour not exceeding six months.

S. 11. All offences against this Law shall be tried in a summary manner before the resident magistrate for the parish in which the same shall be committed.

[In charging any person with being a person practising obeah, it shall be sufficient in the charge to state that he is a person practising obeah, and if any one of the acts mentioned in the definition of a person practising obeah in s. 3 (of the above Law) is proved against him, he shall be liable to conviction on such charge, and to the punishment provided by s. 4 of the said Law.]

Observations on Past and Present Law.—Prior to 1898, the law on this subject was in such an unsatisfactory state, owing to the difficulty that then existed of framing a proper charge on the facts, that scarcely a conviction which was passed in the Magistrates' Courts was held good on appeal to the Supreme Court. This difficulty was abolished by the new

[1] The additions in brackets [ ] were made by Law 18 of 1899.

Law, which made it sufficient to charge a person with "being a person practising obeah," and to prove any one or more of the acts mentioned in the definition of "obeah" in the Law. The new Law has been eminently successful in enabling the police to obtain convictions. Appeals since its passing have been rare, and still more rarely successful. Still, it is defective in this respect: that in providing an almost equally severe punishment for persons who consult obeahman, it has made it very difficult for the police to obtain evidence in genuine cases; and it has led to the very questionable practice of tricking obeahmen into working obeah by sending to them police agents in the disguise of persons genuinely seeking the obeahman's help. The Bench have more than once animadverted on this procedure, but there can be little doubt that without recourse to some such expedient, however notoriously an obeahman might be carrying on his trade, it would be practically impossible to get any one to come forward to give evidence, and so render himself criminally responsible. Since the passing of this Law, though the convictions against obeahmen have been numerous, those obtained against persons for consulting them have been very few.

Suggested Amendment.—Having regard to this condition of affairs, and to the fact that the position occupied by the obeahman in public estimation is very much lower than in former days, I venture to think the time has come for a change in the attitude with which the Law regards the obeahman. I think it would go far to take away the influence and mystery which still attach to these men if the Law were to ignore the claims they make to supernatural powers, and to deal with them and punish them as any ordinary cheat or impostor who makes his living by dishonest pretences. Such a change, with the better digestion of the instruction that is now freely afforded by the Government to every child in the Colony, would, I have little doubt, lead before long to the obeahman and his mysterious performances passing into oblivion.

NOTE ON THE PENAL CONSEQUENCES OF BANKRUPTCY UNDER THE BANKRUPTCY LAWS OF ENGLAND AND THE UNITED STATES.

[*Contributed by* E. W. Hansell, Esq.]

Number of Offences Compared.—The United States Bankruptcy Law of July 1st, 1898, as amended by the law of February 5th, 1903, contains in s. 29 a list of five "offenses" relating to misconduct by a bankrupt and other persons in connection with the bankruptcy. The maximum penalty for these is two years' imprisonment, and the indictment must be found or the information filed within one year after the commission of the "offense." As against this, the English Acts—viz., the Debtors Act, 1869, and the Bankruptcy Act of 1883—emunerate no less than sixteen misdemeanors and one felony for which the maximum penalty is two years' imprisonment with hard labour, and three misdemeanors punishable with the maximum of one year's hard labour. All these offences may be committed by any person, whether a trader or not, in respect of whose estate a receiving order has been made, and the three last mentioned by any person whatever. In addition to these crimes it is made a misdemeanor for an undischarged bankrupt to obtain credit to the extent of £20 or upwards from any person without informing such person that he is an undischarged bankrupt; but, oddly enough, although the provisions of the Debtors Act, 1869, are applied to this crime, and the bankrupt "may be dealt with and punished as if he had been guilty of a misdemeanor under the Debtors Act, 1869," it is not stated in the Act whether the maximum penalty is to be imprisonment for one or for two years.[1] A false claim also by a creditor, made wilfully and with intent to defraud, is made punishable with imprisonment not exceeding a year with or without hard labour. In the American Statute the crimes enumerated must from their nature have been committed after the filing of the petition, but in this country it is sufficient in the case of nine of the misdemeanors and the felony above mentioned that the act has been committed within four months next

[1] Since the above was written the point has arisen, and it has been held that the maximum penalty is one year (*Rex* v. *Turner*, 20 *Times Law Reports* 67).

before the presentation of the petition ; and further, as above mentioned, it is with us a misdemeanor for any person at any time to obtain credit under false pretences or by fraud, or to make a gift, delivery, transfer of, or charge on his property with intent to defraud his creditors, or with a like intent to conceal or to remove any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

What are Bankruptcy Offences in the United States.—The five "offenses" in the American Statute are, shortly :—

(1) Concealment of property by a bankrupt ;
(2) Making false oaths or accounts in or in relation to any proceeding in bankruptcy ;
(3) Presenting a false claim for proof in a bankruptcy or using any such claim in a composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney ;
(4) Receiving any material amount of property from a bankrupt after the filing of the petition with intent to defeat the Act ;
(5) Extorting or attempting to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

It is of the essence of these acts that they should have been done "knowingly and fraudulently."

Adaptation to England.—Items (4) and (5) do not appear in the English Statutes, and unless (4) was limited so as to exclude creditors who, *e.g.*, may receive undue preferences, it would not seem a desirable addition to our Statute-Book. But, with proper limitations, it is submitted that it would be useful to have some positive enactment with regard to people (other than creditors receiving the amounts of their debts) who may aid or abet a bankrupt to make away with his property, and to forbid such conduct under pain of the criminal law. It is suggested also that something in the nature of clause (5) would be advantageous to administration in bankruptcy, for during the last decade or so there have been cases reported in our law-books which show that a strengthening of the law in the direction of the matters covered by clauses (4) and (5) would be desirable.

It would seem, however, that penal enactments in bankruptcy should chiefly be concerned with the acts and defaults of the bankrupt himself, which are very fully dealt with by the present English legislation, and the multiplication of crimes is no doubt to be avoided as far as is consistent with the efficient working of the law. Nor must it be forgotten that there are civil consequences of bankruptcy, such as disqualification for various offices, refusal or suspension of a discharge, and the prevention or restriction of dealing with a bankrupt's property, which makes the bankruptcy law of use both as a deterrent and as a means of punishing persons guilty of business misconduct, or living at the expense of others.

Trustees in Bankruptcy.—But next, perhaps, to the bankrupt himself, the person about whom a bankruptcy law should be specially concerned would be the trustee whose duty it is to protect the interests of the creditors. The wide powers and effective control vested in the Board of Trade under the present English system, vigorously used, have done much to bring about honest and efficient administration of bankrupts' estates by the trustees appointed to administer them, and to safeguard the interests of creditors. But it may be worthy of consideration whether any future legislation on this subject might not well include an express enactment similar to that contained in the United States law, which makes it criminal for a trustee to have "knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property, or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee." For the efficient working of a bankruptcy law it is essential that those for whose benefit it is intended, the creditors, should have confidence in those who have to administer the estate, and so long as administration is permitted by other than State officials—and it is not suggested that it is desirable that in all cases State officials should wind up bankrupt estates, or that the present system should in this respect be changed—nothing should be omitted which may help to maintain and to justify that confidence.

AN ITALIAN VIEW OF THE LAW OF TORTS.[1]

[*Contributed by* M. Sheldon Amos, Esq.]

Continental Neglect of English Private Law.—There is no subject which has excited more fruitful interest among continental jurists than that of English public law; there is none, on the other hand, which has been hitherto treated with greater neglect in the same quarters than English private law. In spite of the enlightened curiosity which prevails in France, Germany, and Italy with regard to the domestic law of foreign countries, however far afield, for some obscure reason that curiosity stops short on the frontier of the English language, and few and rare indeed are the evidences of any first-hand research by foreign writers into any of what we would have supposed to be the highly suggestive and distinctive legal institutions of England and America. The "trust" idea, with its numerous and diverse developments, the law of injunctions, specific performance, the doctrine of estoppel, are for continental scholars as yet unexplored fields—so far as the investigations of the present writer extend. It is not easy to account for this obstruction of the field of vision. What are the conditions of demand and supply which produce monographs unnumbered on such recondite topics as the marriage customs of the Basques, the bankruptcy laws of the Argentine Republic, the place of the judiciary in the American Constitution, or the history and working of the Habeas Corpus Act, and yet, so far as we are aware, have never brought forth a critical study of the Anglo-American conception of the trust?[2] Much of this neglect is due to the prevalence of the notion that English law exists in a wholly inaccessible form; much to mere ignorance of the existence in modern Anglo-Saxon law of any peculiar or interesting institutions; but we believe that the chief explanation is to be found in

[1] *La Nozione del Torto nella dottrina et nella giurisprudenza inglese*, p. ix. 83, Mario Sarfatti, assistente all' Istituto Giuridico presso la Reale Università di Torino (Milano, Società Editrice Libraria, 1903).

[2] A considerable amount of information is contained in Lehr's *Eléments du Droit Anglais*; but it attempts to deal in a book of moderate dimensions with the whole body of English private law, and does not aim at being more than an uncritical *précis* of the principal rules of law.

the widespread belief that the effect of the special authority attached by us to judicial precedent is to banish from our private law all legal principle.

In view of the prevalence of this attitude of mind among the legal scholars of the Continent, it is with more than common interest that we welcome Signor Sarfatti's luminous monograph. Nor are we surprised to note that this new departure comes from the University of Turin, at the present time one of the most active circles of intellectual life in Europe.

Signor Sarfatti's "Torts."—Signor Sarfatti has chosen for the field of what we hope will prove to be but his first voyage of discovery into the domain of English law, our law of tort, as to which he rightly thinks that it is one of the most original parts of our system; indeed, he goes so far as to say that "the building up [for modern law] of the conception of tort is the *exclusive* work of English jurists." In this connection it is of interest to note that the brilliant author of the most recent commentary on the French Civil Code, Professor Planiol, announces the surprising discovery that the law of tort has been treated by previous French writers with unmerited and surprising neglect. Dismissed by the Code in five articles, it has been silently developed to ample proportions by the decisions of the Court of Cassation; but this development has passed unnoticed by teachers and book-makers. "Aucun jurisconsulte n'a catalogué les obligations dont les hommes sont tenus de plein droit et en l'absence de tout contrat, à l'état *d'obligations juridiques*, opposables aux *simples devoirs moraux* dont la loi ne tient pas compte. Ce travail n'est pourtant pas infaisable. Il existe déjà à l'état d'étanche dans les décisions de la Cour de Cassation. . . . En parcourant ces arrêts, on dresserait une liste déjà riche d'obligations légales donnant lieu à des contraventions connues sous le nom de *fautes*."[1]

Plan of the Monograph.—In Section I. of his monograph Signor Sarfatti sets before his readers the peculiar claims which the English law of torts has upon their attention. In Section II. he investigates the fundamental principle of tortious liability in our law, and comes to the conclusion that the test of wrongful action is essentially a blameworthy will, or lack of will. In this connection it is curious to note that the writer appears to assume that a tort is *par excellence* a *negligent* wrong—in other words, that our law of torts is pre-eminently concerned with the definition of *culpa*. This is to lose sight of the essential unity of a system which embraces both negligent and malicious wrongs, and by no means assumes that

[1] Cf. Planiol, *Traité Elémentaire du Droit Civil*, ii. § 865. These remarks are applicable, *mutatis mutandis*, to all those countries which have adopted, in substance, French law, with its lack of definition of the antecedent duties the breach of which constitutes a tort. The new German Code starts from the opposite principle, and devotes thirty-one articles (Arts. 823–853) to the definition of antecedent duties, and the grounds of non-liability and of derivative liability. As contrasted with the wealth of English principle, this is meagre; but it differs from the Latin system in furnishing an exclusive, if abstract, enumeration of the sources of tort.

deliberate or "malicious" injury (that is, what Signor Sarfatti would call injury caused by *dolus*) presents no difficulties of definition, or is of necessity always tortious.

Rights Underlying the Law of Torts, and Defences.—The chief merit and interest of the English law of tort is to be found, however, not in the subtilty of its definitions of the subjective element in wrongful acts, in which respects it has perhaps little superiority over other systems, but rather, as previously remarked, in the detailed manner in which it traces the limits of the antecedent right the invasions of which is the necessary objective element in an actionable wrong. There is no more striking example of this than in our law of libel and slander, of which Signor Sarfatti gives an accurate though brief account. The fact that our Courts lend themselves to the trial of the truth of defamatory statements comes as a surprise to continental lawyers; while to us it appears a social function with which it is difficult to imagine a civilised society dispensing. There is little doubt that, among other things, it has had very much to do with the disappearance of duelling in England.

In Section III. Signor Sarfatti passes in review the circumstance which may extinguish a *prima facie* liability—distinguishing subjective circumstances, including infancy and mental defect, and objective circumstances, including contributory negligence and consent.[1] As he rightly points out, the defence of contributory negligence involves no real exception to the ordinary rule that a person is liable for the damage caused by his negligence. It merely directs attention to the question whether the damage of which the plaintiff complains was in fact proximately caused by his own or by the defendant's negligence. As contrasted with our rule, that prevailing on the Continent and in our Admiralty Courts—the *rusticum judicium* under which the loss is divided between the parties in a measure roughly proportioned to their faults—is in a sense more equitable. Our law permits the defendant to throw absolutely upon the plaintiff the duty of rising to a higher standard of carefulness than, in the absence of the defendant's fault, there would have been occasion for.

Torts by Employees and Animals: Corporations.—Section IV. treats of derivative liability—the liability of the master for the torts of his employee, and of the owner for the injuries caused by his animals, and by the defective state of his buildings. Under the same heading the writer speaks briefly of the tortious liability of corporations, stating without remark the doctrine that they are liable to the same extent as natural persons for the acts of their "commessi"—which we may render by the term "representatives." So far as this statement of the derivative liability of corporations is accurate, it presents little interest—there is in general no particular reason why

[1] This enumeration is hardly complete, omitting as it does the immunity of judicial and official persons. This immunity is much less complete in Latin, or at any rate in French, law, than it is in English.

corporations should be distinguished from natural persons in respect of their liability for the wrongs of their representatives acting in the course of their employment. But what of the case where the contract of employment is *ultra vires* of the corporation? On this topic the writer would have found matter in the reports which would, we think, prove of the highest interest to continental readers. Signor Sarfatti does not allude to the somewhat subtle distinction sometimes made between the derivative and what we may call the "primitive" liability of corporations. It has sometimes been thought necessary to emphasise the fact that the act for which it is sought to hold the defendant corporation liable is a *corporate* act, and not merely the act of a representative or agent;[1] and it is in such cases, and in such alone, that the question how far a corporation can be held liable for malicious wrongs arises in its acutest form. The importance of this question would appear, however, almost wholly to have disappeared with the settlement of the doctrine that the principal or master may be held liable even for the malicious or fraudulent wrongs of his agent or servant; the officers or other administrators of a corporation are surely at the least agents or employees. It would seem that the question could only now arise in the case, difficult to conceive, of an act of the body of corporators as such being complained of as tortious.

Servant and Agent.—We should have expected in this connection to find a reference to the distinction made by English authorities between the liability of a principal for his agent and that of a master for his servant. So far as we are aware, the practical importance of the distinction has not been much dwelt upon by continental jurists. It is nevertheless eminently rational that the greater control exercised by the master—as distinguished from the mere principal—over the conduct of his subordinate should carry with it a more unrestricted responsibility for the latter's acts. Signor Sarfatti gives no place to what might furnish an interesting topic for enquiry—whether and to what extent our law of derivative liability is based upon the maxim "qui sentitæ commodum sentire debet et onus," as distinguished from the rival principle which bases such liability exclusively upon the assumed *culpa in eligendo*, or its analogue *culpa in custodiendo*.

In Section V. the writer sets forth the rule *actio personalis moritur cum persona* and its modern limitations—both alike completely strange to our logical brethren on the Continent—and enters in some detail into the question of the measure of damages under Lord Campbell's Act. Section VI. contains a summary discussion of various classifications of torts accompanied by tables.

Malicious Wrongs.—The writer's lack of interest in that part of our law which relates to malicious wrongs has caused him to pass over certain topics which even in so short a space would, we should have supposed, have proved of interest to his readers. The law of malicious prosecution,

[1] *E.g.*, in an American case, *Godspeed* v. *East Haddam Bank*, 22 Connecticut 530.

the law of deceit, the much-vexed topic of malice as actionable *per se*, and the liability of corporations for malicious wrongs, offer, we should have imagined, a fruitful field to the foreign student of our institutions. We are somewhat surprised that Signor Sarfatti should not have called particular attention to Sir Frederick Pollock's draft Indian Civil Wrongs Act, which presents the remarkable topic which he has selected for discussion in a concise and striking form.

It is, however, perhaps ungracious to lay stress upon omissions in a work of a pioneer character such as this. We by no means wish to offer any discouragement to adventurous persons who have the courage to explore the mysteries of English law. On the contrary, we are convinced, not only that they will there find a practically virgin field of exceptional interest, but that their enquiries are likely to do much to stimulate among ourselves a critical and comparative study of our own laws.

THE INDUSTRIAL LEGISLATION OF HUNGARY.

[*Contributed by* Dr. E. Hantos, *of Budapesth.*]

It is a well-known fact that no country of the world has such a mass of investments as the United Kingdom, whether in its own dependencies or in foreign countries. English capital and labour display a wonderful mobility; but English enterprise has lately met with frequent difficulties in its wanderings, and in some instances even with inhospitable restraints.

Hungary, on the contrary, offers every advantage for the employment of British capital in industrial concerns. The textile industries, in which England has the most experience and which Hungary wants chiefly to see established, would be the right opening for British enterprise. The time seems to be most propitious, because, judging by the events recorded day by day from Hungary, she is preparing for economic separation from Austria. A time will very soon come when Hungary will have a tariff of its own, directed most likely against Austrian industry, when there will not only be a good market for British products of various sorts, but the factories established in Hungary will receive every encouragement and assistance. This is not a mere phrase or prophecy, but a statement of enacted law in Hungary.

A Bill passed in 1899 by the Hungarian Parliament, the 49th of the Statutes of 1899, is entitled, "For granting State Favours to encourage Home Industries." We quote the following important passages:

What Undertakings will receive State Favours?—Factories equipped by appliances of modern progress producing articles not as yet made within the countries under the Crown of Hungary (Art. 1).

The following factories hereafter established, being equipped by appliances of modern progress—*viz.*:

(*a*) Factories for porcelain or stone wares, fire-proof bricks, glass plates, plate glasses, and bottles, as well as industrial settlements with answerable equipment for marble quarry and marble cutting.

(*b*) Rollers of metal plates (with exception of iron plates); factories producing metal pipes (except pipes of cast iron), metal wires, wire nails, zinc wares, needles (pins), tools, articles for outfitting door and windows, arms, machineries for tool-making, and engines

for manufacturing of raw materials; factories for producing of lamps, fancy metal wares, and hard iron castings.

(*c*) Factories for tools, educational instruments, pianofortes and harmoniums.

(*d*) Factories for paper, paper materials, cellulose and wall-papers.

(*e*) Factories for chemicals, caoutchouc and wax-lights.

(*f*) Factories for unfurling, spinning, and weaving of silk; silk dyers, spinners, weavers, dyers and bleachers of wool or woollen goods, of cotton wool or goods made thereof; makers of appliances for treating and preparing hemp, flax, lint, jute, and the goods made thereof; knitting factories; binding braid and lace factories.

(*g*) Mining undertakings where electro and acid process is employed by way of treatment.

(*h*) Producers of artificial manure, malt, dextrin, potato syrup, dyes, vegetable and mineral oils, glue, chocolate, "katang" roasters, and coffee supplements; producers of salted, dried, smoked meats, sausages, and kindred products, provided that latter work for export (Art. 2).

What are the State Favours?—In addition to the exemption from house duty and local rates already made by Art. 2 of the Bill 1870, the following State favours will apply to undertakings enumerated above:

(*a*) Exemption from taxes on the income, from mining tax, and from all taxes otherwise payable by firms bound to keep accounts, and from all supplementary communal rates, dues payable to chambers of commerce or industry in respect of such taxes, and finally from the general supplementary income tax.

(*b*) Exemption from payment of any duties and fees or communal dues and charges in respect of any purchase (acquisition) of, and the transfer and registration of, title to any freehold land or buildings for their purposes, and where public companies are or have been formed stamp fees on contracts or other documents, the issue of its shares and stocks whether at its formation and registration or upon an increase of capital.

(*c*) Undertakings requiring impure salt for manufacturing purposes may have the price for such fixed by the Minister of Finance even below that fixed by Art. 13 of the Bill L. of 1875, and when so supplying the salt he may fix the amount required by way of deposit below that fixed by the article named.

(*d*) The exemptions conferred by s. 159 of the Bill I. of 1890 shall also apply to undertakings coming within this present Bill. S. 159 of the Bill I. of 1890 runs in extenso: "All undertakings entitled to State favours under the Bill XLIV. of 1881 shall, during the period of their being exempt from the payment of the taxes and duties enumerated in the said Bill, be also exempt from

any charges (otherwise) assessable by the county authorities for the making and maintenance of roads."

Who is the Grantor of State Favours, and for what Time?—The Minister of Commerce, the Minister of Agriculture and of Finance concurring respectively, are authorised to grant the State favours and to fix the duration of the period for which they are granted, provided, however, that in no case shall such period exceed fifteen years in all. For Croatia and Slavonia, these lands of the Hungarian Crown, the same rules are in force, except that here the Hungarian Minister of Commerce must act with the consent of the Banus.

Some Practical Examples.—To give a fair idea how these provisions are carried out, I will give a few instances. A foreign firm, invited by the Hungarian Government to erect a silk-mill, has been offered the following advantages: A building site of thirty acres, free from charge; bricks, stones, and wood from the State and municipal forests; reduction of 75 per cent. in the rates of the Hungarian State railways for the machinery to be imported; and finally a State subvention for ten years amounting to 3 per cent. of the invested capital. Similar advantages have been offered to a firm of weavers, to some agricultural implement manufacturers, and to a number of other firms each representing a different industry. And as all these factories, to be erected by foreigners, will be regarded as Hungarian, they may feel sure that wherever the State is a customer the articles made in Hungary by foreigners will be preferred by any other, even if not so good and a little dearer.

But not only the Government; every Hungarian individual is ready in assisting British manufacturers (rather than any other foreigners) who have skill combined with capital, and are willing to establish any of the numerous trades which are needed in Hungary.

A Promising Field for Manufacturers.—If to all these advantages I add that Hungary is a very rich, though agricultural country; that its position is splendid for access to all the Balkan States as well as the Mediterranean; further, that the Hungarian peasant is very intelligent, and will, in a remarkably short time, under proper training, become a competent skilled labourer,—I may perhaps be allowed to express an opinion that British manufacturers would prosper in Hungary at least as well as in any other of those countries whose industries they have helped to develop.

THE LEGAL LIABILITY OF THE EXECUTIVE.

[*Contributed by* W. Harrison Moore, Esq.]

The Crown's Immunity from Suit.—It has been pointed out, but not so often nor so clearly as is desirable, that the citizen under the English Common Law pays something for that control of executive action in respect to its legality which is so distinctive of our system. In the first place, the Crown personifies the State, and the Crown enjoys immunity from suit, save so far as the Petition of Right extends. There is thus no liability of the State for the torts of its servants, though those torts may be done in respect of very private matters of property. The individual wrongdoer is liable, no doubt, but he is often enough a man of straw, and the Courts are slow to extend doctrines of representation to this class of case. In the second place, our Courts are not infrequently called on to determine cases in which there is a conflict of public policy and private right, and being Courts of Law without the discretionary power of administrative tribunals, they have deemed themselves to have no alternative between the adoption of a rule highly detrimental to the public service, and one which sacrifices the individual. In such cases, the individual seems to be better off under the Continental system than our own. In recognising a distinction between acts of governmental authority on the one hand, and acts and relations which, though done by or existing in the case of the State, are of a kind which may be done by or exist in the case of the individual, French law provides a tolerably sufficient set of remedies to the individual in the latter class of case. To some extent our own law recognises the distinction, in that there exist a limited class of "acts of State" which are outside judicial competence. The distinction exists, however, not to fix liability upon the State in cases outside this class, but to exonerate individuals from liability in the class of case that falls within it.

In America, the distinction between *governmental* and *ministerial* acts has become familiar in relation to the liability of municipal bodies. Accepting the Common Law doctrine that the State is not a juristic person with liabilities enforceable in any Court, American law extends that immunity to the local governments whenever they are acting in a "public and governmental capacity," as in the issue and execution of ordinances, the determination

on the general plan of public improvements, and in "the management of police in the wide sense of the term—that is, as embracing the preservation of the public peace, health, and safety." On the other hand, cases of purely municipal activity where the corporation becomes subject to the private law of torts are where it is managing institutions which have been adopted for the good of the inhabitants of particular districts—*e.g.*, wharves, water and gas works, markets and wash-houses. Further, it is in a local and quasi-private capacity as to the management of sewers, drains, and public works generally. The principle of liability in these classes of case is either that the corporation is managing property, or that the work done is of local and not general interest, and the Courts tend to extend the liability of corporations for tort to all cases of property under their control, even though that property is used for public or governmental purposes. (See generally Goodnow, *Municipal Home Rule and Municipal Problems.*) Certainly they will be held liable in respect to all property from which they draw a revenue. English Courts have not made great use explicitly of the distinction in question; and in the case of the *Idun*, 1899, P. 236, where an attempt was made to restrict the benefit of the Public Authorities' Protection Act, 1893, to cases in which the authority was not acting in pursuit of a trade or business, Sir F. Jeune held that the public character attached to all the acts of a municipal corporation done within the authority committed to it; and this was approved and followed by Kekewich J. in *A.-G.* v. *Company of Proprietors of Margate Pier*, 1900, 1 Ch. 749. The distinction is, however, really involved in the rule that local bodies are not in general liable to individuals for loss and damage suffered by the non-execution of the administrative functions of a public authority, but are liable for negligence in the execution of their plans. (See *Glossop* v. *Heston and Isleworth Local Board* [1879], 12 Ch. Div. 102; *Borough of Bathurst* v. *Macpherson* [1879], 4 A.C. 256; *Cowley* v. *Newmarket Local Board* [1892], A.C. 345; *Municipal Council of Sydney* v. *Bourke* [1895], A.C. 433; and Beven on *Negligence*, i. 375.)

Colonial Governments and Crown Immunity.—The varied activities of colonial Governments, and the extent of the "waste lands" and the mineral rights which many of them hold, make it practically impossible to maintain the old rule of the immunity of the Crown from suit in its integrity. The necessity has been met partly by making certain authorities (*e.g.*, the Railway Commissioners or the Minister of Lands) corporations with the right to sue and be sued, as has of course been done in England. But it has also generally been met by enabling the subject to proceed against the Government for torts. The question then arises—What is the measure of liability? Where an authority has been constituted to discharge a function which is capable of being discharged by citizens, it may be assumed that the tests are those ordinarily applied as between subject and subject; though a special rule has sometimes been established by Statute, as that (in New South

Wales and Victoria) the damages recoverable against the Railway Commissioners for personal injury are limited to £2,000. Where, however, the Government is discharging some function outside the activities of citizens, the law as between subject and subject furnishes no rule to meet the case, and in substance the Court has to find a rule. This has appeared very clearly in more than one case decided in Australia during the last few years. *Gibson* v. *Young*, 1900, N.S.W.R. 7, and *Davidson* v. *Walker*, N.S.W., 1901, 1 State Reports 196—both of which were treated by the Court as cases of first impression—may be referred to.

Action by Prisoner for Negligence.—*Gibson* v. *Young* was an action against the Minister of Works as nominal defendant, brought by a prisoner in a gaol under the control of the Government, for damages in respect to an injury received by the plaintiff from the bursting of an engine caused by the negligence of the Government servants. The defendant demurred on the ground that the Government was not in the circumstances alleged liable for the want of care and skill of its servants, that a prisoner could not maintain an action against the Government for injuries accidentally received during the term of his imprisonment, and that the duty alleged in the declaration did not exist in law. Counsel contended that the Government was not liable on grounds of public policy, and this was the question as it presented itself to the learned Chief Justice, and on it he rested his judgment (pp. 11, 12). Such an action, if maintained, would encourage the submission of all sorts of complaints by prisoners to the Courts, with the result that the management of the gaols would in effect be taken out of the hands of skilled officials to be replaced by the "uncertain, unstable, and unskilled management of the jury-box." The other judges concurred, holding that to allow a prisoner to maintain an action for tort for circumstances connected with his imprisonment would be to paralyse the officers and destroy prison discipline. Cohen J. observed: "It certainly does seem hard at first blush that the plaintiff, if he has been injured in the manner suggested, should be without remedy; but it is only another illustration of the rule that private inconvenience must be subordinate to the public welfare," and he compared the immunity of the Crown and public officials in such circumstances with that of judges, counsel, and witnesses, which equally may in certain cases cause individual hardships. (This, it may be noted, is a favourite comparison of supporters of the French Droit Administratif—see Barthélemy, *Traité Elémentaire de Droit Administratif*.) Prison officials would be sufficiently controlled by official discipline and the responsibility of the executive to Parliament. It will be seen that the principle of the decision extends to the immunity of the individual officer causing the damage, and Cohen J. expressly intimated that his opinion covered that case. So far as the official is concerned, the case would fall within a principle to which the Courts have often resorted when invoked to compel the action or give damages for

alleged wrongs by official persons or bodies—viz., that the duty of the officer was strictly an official duty, and not duty towards the subject correlating any right in him—what Austin calls an absolute, and not a relative duty.

Action for Nuisance against Government.—In *Davidson* v. *Walker* the action was brought against the Government, represented by a nominal defendant, for an alleged nuisance caused by the maintenance of a police station and lock-up, and for so negligently constructing the same as to allow noises to proceed therefrom to the disturbance and annoyance of plaintiff and his family. The Government could not rely on any Statute authorising their acts, and it was in evidence that the plaintiff suffered special damage, and that by better construction the nuisance could be very greatly, if not altogether, abated. Owen J., who tried the case, while not going the length of saying that in no case could the Government be liable for a nuisance of this character, thought that it would be entirely contrary to public policy if every time Government had to erect a building of this kind they were to be subject to an action by persons living in the neighbourhood. The matter was one for executive discretion, and not for the discretion of the Court. The Claims against the Government Act did not imply that because an action of tort might now be brought against the Government, it was to be dealt with on the footing that the subject had the same rights against the Crown as against a fellow subject. On motion for a new trial, the Full Court affirmed the decision. First of all they pointed out that the nuisance was actually caused by the act of the police in bringing noisy persons to the lock-up, and the lock-up was not shown to be subject to the control and supervision of Government. Then, it had been contended that the Government was liable for having come to this site and set up the building there with the intention that it should be used as a lock-up and without taking such precautions in construction as would prevent it becoming a nuisance. That had been determined in favour of a body acting under statutory authority in *L. B. and S. C. Railway Company* v. *Truman*, 11 A.C. 45, and though the Government had no statutory authority, it was in a stronger position than a railway company, in that the latter was acting for its own interest as well as that of the public, while the Government was acting in the public interest alone. "The Government acts for the public alone, and must consider its interests, and to the best of its judgment act accordingly, even though it may cause some detriment to private interests. . . . I should have no hesitation in holding that the Government here is in a higher position than the railway in that case—its functions are of a higher character—and for the public good it must possess, and we must attribute to it, a large degree of immunity from action in the exercise of those functions" (Stephen J., p. 207). A. H. Simpson J. observed that if this was an action against a private individual in a private matter, the plaintiff would be entitled to succeed, and proceeded to point out the difference between private persons and a Government in reference to this class of liability. Private persons were ordinarily not

bound but *authorised* to carry out works, and in general derived some benefit therefrom, whether in the way of pecuniary profit or gratification of their philanthropic interests. But Government was bound in the administration of justice and for the peace and quietness of the realm to maintain prisons, court-houses, and lock-ups, and the police were bound to bring disorderly persons before the magistrates. The maintenance of prisons and lock-ups was not a source of revenue, but the discharge of an onerous and unpleasant duty incumbent on the Government of all civilised countries. He cited *Hawley* v. *Steele*, 6 Ch. Div. 521, as a distinct authority that acts which would be wrongful and actionable if done by private individuals are not necessarily actionable when done by a department of the Government for the benefit of the whole community. He did not regard the Claims against the Government Act as putting the Government in the same position as a private person, for this would amount to submitting to the control of a jury the exercise of various important functions of Government, such as the administration of military matters, of justice, the control and management of prisons, lunatic asylums, public schools, etc. Practically this would render the Government departments in these important matters helpless.

Significance of the Cases.—In both these cases we may note the anxiety of the Courts not to intrude upon the functions of the executive, and to leave control to Parliament, to which the executive are responsible. In America, the incapacity of Courts and juries to deal with matters of administrative determination has influenced the Courts in their ruling as to the liability of municipal bodies (see *Mills* v. *City of Brooklyn*, 32 N.Y. 489). Further, the decision that the immunities of the Crown in tort are not solely the consequence of the immunity from suit, may be compared with an analogous decision in regard to subordinate communities. It has sometimes been thought that the origin of the rule that no action will lie for injury received through the non-repair of highways was in the fact that the inhabitants were not a corporation and could not be sued. But in the leading case of *Russell* v. *The Men of Devon*, 1788, 2 T.R. 667, it is, as Mr. Beven (*Negligence*, i. 3) points out, sufficiently indicated that even if the technical difficulty were removed, sufficient reason exists in public inconvenience against giving the action.

With the growth of the activity of Government on the one hand, and the submission of the Crown to the jurisdiction of the Courts, we may expect a clearer enunciation of the relations of executive and subject in modern times than has been possible so long as the Crown enjoyed immunity from suit and the limitations upon the responsibility of officers often left the sole liability on some one who was not worth powder and shot.

INTERNATIONAL RAILWAY TRANSPORT.

[*Contributed by* G. G. Phillimore, Esq.]

"Through" Contracts of Carriage.—It seems curious that no step has up to the present been taken by British merchants to urge their Government to consider the question of its adhering to the International Railway Transport Convention of 1890, signed at Berne by Germany, Austria-Hungary, Belgium, France, Italy, Luxemburg, Holland, Russia, and Switzerland, and since acceded to by Denmark. The object of the Convention was to provide for "through" contracts of carriage of goods by railway from one signatory country to another by means of an international code of rules instead of the private arrangements existing between railway companies of different nations, such as those governing the relations of over a hundred railway administrations of Central and North-Western Europe in 1874, or the special ones between different Governments, such as that of 1881 between France, Germany, Denmark, Russia, and Austria, and that between France and Great Britain of 1871. The Convention was the result of conferences held on the invitation of the Swiss Government in 1878, 1881, 1886, and 1890, and in 1893 it was said that 66 per cent. of the continental railways were subject to it. It has been exhaustively explained in the *Journal de Droit International Privé* by MM. Poinsard and Lyon Caen (1892, 33 ff.; 1893, 465; 1894, 435, 641); and there have been numerous decisions on its provisions in the Courts of France, Germany, Austria, and Switzerland.

Its effect is, briefly, to constitute a "through" contract of carriage of goods (not persons) from one signatory party to another available by railway lines designated by the Governments of their respective countries, subject to uniform rules as to form of contract, description of goods, formalities at departure and arrival of goods, proof of loss, measure of damages for loss or damage, rights and duty of the consignor and consignee, liability of the carrying or part-carrying railway, charges of transport, limitation of actions and the relations of the railways *inter se*, on which matters the laws of the different countries through which the goods are carried are not the same. The railways so designated are bound to carry the goods on the terms of the Convention consigned to them conformably with it, unless they are goods reserved to the postal service or are excluded from the Convention by

their great value or dangerous character or difficulty of transport, for which special arrangements can be made. No goods can be carried by them on an "international transit" under a "through contract" except under the Convention, and tariffs of associations or unions of railways, as well as of individual railways, must be conformable with it, and no tariffs are allowed in favour of individuals. The Convention leaves to the decision of the various municipal laws such points as (*a*) the right and duty of assessing and controlling the weight of the goods or the number of packages (7); (*b*) the verification of the description of the goods (*ibid.*); (*c*) when the delivery of the goods is considered complete (19); (*d*) the effect of the lien (*gage*) given to the railway (22); (*e*) the verification of the damage or loss of the goods (24); (*f*) what will interrupt the time for limitation of claims when it has begun to run (45).

Ascertainment of Liability.—One of the great advantages given by the Convention is that the goods owner obtains a more effectual remedy against the railway carrier than he can by private contract, owing to through transit being governed by the same conditions in every country. Under a contract with a railway in this country for a through transit in England, the railway can make itself liable for the goods even when not under its control, as they are always subject to one system of law. In the case of a contract for through transit abroad as well as at home, the goods are subject to foreign law as well as English, and these may not be the same. If nothing is said as to which law is to apply, the intention of the parties has to be inferred, and the general rule of law, foreign as well as English, may be said to be that while the law of the country where the contract is made may govern it generally, yet as to incidents taking place in another country the law of that other country governs. An English railway company is hardly likely under these conditions to accept goods for through transit, say, to Vladivostock, for a consignee in Vladivostock who will pay for the transport only on receipt of the goods, and make itself responsible for the risks they run on the different lines conveying them to their destination as well as for complying with the different conditions imposed by the law of the various countries the goods pass through. In the case of loss or damage to them it might not know which line was responsible, and if it did know it might not be able to sue it under the foreign law. If the goods owner instead of trying a through contract made separate contracts with the separate lines for their transport, he would be in a similar difficulty. The Convention cuts the knot of these difficulties by making the railway which accepts the goods for carriage under an international transport liable for the execution of that transport throughout till delivery, and a similar obligation falls on every railway sharing in it. The goods owner can sue on the contract of carriage either the railway accepting the goods, or that which last received them, or that on whose line the damage was done, at his option, and he can counterclaim against any railway concerned in the act of carriage. The

railway is bound to deliver to the consignee on payment of the charges of transport, which fall on the consignee in the absence of express provision, but certain goods (perishable) can be charged for in advance (12), and the consignor can also charge the goods with the cost of reimbursement up to their full value, and if the railway deliver them to the consignee without obtaining payment of that reimbursement, they are liable to the consignor. The consignor has the control over the goods during their transit (15). The railway has a lien on the goods, and is responsible for the fulfilment of all duties required by customs, *octroi*, or police authorities in the transit.

Time Limitation for Claims.—A time of limitation for claims is fixed: a year for total or partial loss, damage to goods or delay in delivery, but where there has been fraud or gross negligence by the railway, three years (44, 45); and a special scale of damages for delay in delivery without proof of any actual damage, one-tenth of the transit charges for one-tenth of the delay, and also for the same case where declaration of interest in the delivery has been made, is provided (40). Full indemnity comprising damages and interest can be claimed where the damage is caused by the fraud or grave fault of the railway (41), and the railway is responsible for its agents and servants (29). A judgment pronounced in such cases where both parties have been represented or by default and made executory, can also be made executory in the other signatory States without going into the merits; and no security for costs can be demanded in actions brought on the contract of through transit (56). The Convention also provides for the rights of the various railways carrying goods on through transit *inter se*; any one receiving payment, whether on departure or arrival of the goods, must pay the others their shares, and the last one carrying the goods is liable for payment of the charges under the waybill if it delivers the goods without receiving payment, saving its own rights against the consignee. The claims of one railway against another arising out of a through transit cannot be attached when the debtor railway is domiciled in a different country from that of the creditor railway, except where the attachment is made under decree of a judicial authority of the country to which the creditor belongs; and the rolling stock and movable property of a railway are not attachable in a country other than that of the railway owning them, except in the case where the attachment is made under a decree of a judicial authority of the country to which the railway owning them belongs (23).

Right-over for Indemnity.—By Art. 47, where a railway has paid the indemnity fixed by the Convention it can recover it wholly from the railway actually to blame for the damage, or if several are to blame, each bears the damage caused by its fault; and if it cannot be proved by whose fault it was caused, all the railways concerned who cannot disprove their fault pay in proportion to the shares they would have had in the charges for transit. A central office is established at Berne for superintending the working of the Convention, receiving and giving in-

formation, receiving applications for adherence from other Powers, and if required adjudicating on disputes between railways; and a railway refusing to pay its debts to another can be reported by the office to its Government. The Convention does not apply to the internal railway traffic of the signatory States, nor does it affect existing agreements between railways and their own Governments.

Sea Transit.—So far as the United Kingdom is concerned, unless the term "lines of railways" includes sea transits which form part of our railway systems to the Continent, adherence to the Convention would be useless; but that this wider meaning is to be assigned to "railways" seems to be clearly the view of the parties to the Convention, Denmark designating the Danish State railways comprising the steamboat communications managed by them, Italy the Sicilian railway comprising the maritime line across the Straits of Messina, and the steamers on the Lake of Constance and the Rhine having also come under it. Considering the great importance which the new vast railway systems, such as the Siberian, which comes under the Convention, and our own projected Trans-African one, will exercise on trade, simplification of contracts of transit seems to be no less required in the interests of business than that of private international law. British railway companies may not be desirous of pressing for a change which may fetter to some extent their freedom of action; but such an enlargement of the scope of railway contracts would necessarily, it seems, produce greater freedom and volume of international trade of which they would share in the benefit. The Board of Trade might well consider whether British trade would not gain a material advantage by joining in the system, which seems to be so successful on the Continent.

TABLEAU COMPARATIF DES PRINCIPALES MESURES LÉGISLATIVES RÉGLEMENTANT LA DURÉE DU

[*By the kind permission of the International Association for Labour Legislation, we are able to present our re*

	ALLEMAGNE	AUTRICHE.	BELGIQUE	FRANCE	GRANDE-BRETAGNE	ITALIE	LUXEMBOURG
	Gewerbeordnung (Loi industrielle) du 26 juillet 1990 Ordonnances des 15 mars et 27 mai 1902 et du 24 mars 1903	Loi du 23 mai 1854 sur le travail dans les mines, modifiée le 21 juin 1884. Ordonnances des 27 mai 1885, 2 avril 1893, 17 juin 1894. Loi du 16 janvier 1895. Ordonnances des 24 avril et 11 août 1895, modifiées le 10 avril 1897. Ordonnance du 17 octobre. Loi du 27 juin 1901 modifiant la Loi du 21 juin 1884	Loi du 13 décembre 1889 Arrêté royal du 31 décembre 1892	Décret du 9 septembre 1848 Loi du 2 novembre 1892, 30 mars 1900 Décrets des 3 mai 1893 et 15 juillet 1893.	Factory and Workshop Act, 1901 Coal Mines Regulation Act, 1887 Metallif. Mines Reg. Act, 1873 Metallif. (Isle of Man) Act, 1891 Prohibition of Child Labour Underground Act, 1900	Loi du 19 juin 1902 Ordonnance du 29 janvier 1893	Loi du 6 décembre 1876 Ordonnance du 26 août 18 Ordonnance du 30 mai 19 Loi du 30 avril 1890 Ordonnance du 7 janvier 1
TRAVAIL DU JOUR :							
Nombre des catégories d'ouvriers protégées par la loi	Trois, éventuellement quatre	Quatre	Trois	Trois, éventuellement quatre	Trois	Trois	Trois
Age minimum pour l'admission au travail	13 ans [1]	14 ans	12 ans	12 ans	*Forges* 11 ans | *Mines* 12 ans (à la surface) 13 ans (au fond)	12 ans [40]	12 à 14 ans
La Première Catégorie comprend :							
Enfants âgés de	Moins de 14 ans	Interdiction du travail des enfants [12]	12 à 14 ans	12 à 16 ans [27]	11 à 14 ans [34] 12 à 13 ans	12 à 15 ans	Le travail dans les mines interdit ; autrement :
Durée du travail : par jour	6 heures	—	10½ heures	*Forges* Actuellement 10½ h. | A partir de 1904 10 h. | *Mines* 8 h.	— 10 heures	11 heures	8 heures
Durée du travail : par semaine (Maximum des heures de travail.)	36 heures [2]	—	63 heures [20]	63 h.[28] | 60 h. | 48 h. [30]	— 36 heures	66 heures [41]	48 heures [46 47]
Le travail souterrain est-il interdit ?	Oui	Oui	Aux jeunes filles, oui	Aux jeunes filles, oui	Oui, aux jeunes filles et aux garçons âgés de moins de 13 ans	Oui, aux enfants au-dessous de 13 ans, et à partir de 1907 à ceux de moins de 14 ans [42]	Oui
Le travail avec des machines dangereuses est-il interdit ?	Pas expressément [3]	Oui	—	Oui	Oui	Oui	Oui
La Deuxième Catégorie comprend :					*Forges* [36] | *Mines* Travaux à la surface | Au fond		
Les Adolescent âgés de	14 à 16 ans	14 à 16 ans	*Jeunes gens* 14 à 16 ans | *Jeunes filles* 16 à 21 ans	16 à 18 ans	14-18 ans | 12 à 16 ans | 13 à 16 ans	15 ans et au-dessus [43]	14 à 16 ans. Le travail dans les mines est interdi autrement :
Durée de travail : par jour	10 heures	*Forges* 11 heures [13] | *Mines* 10 h. [14] et 9 h. (Houillères)	10½ heures | 9, 10½, 11 h.	*Forges* Actuellement 10½ h. | A partir de 1904 10 h. | *Mines* 10 h.[29]	12 heures | 10 heures [35]	12 heures	10 heures
Durée de travail : par semaine (Maximum des heures de travail.)	60 heures [4]	63 heures | 60 h. et 54 h. (Houillères)	63 heures [22] | 54, 63, 66 h.[21]	63 h.[28] | 60 h. | 54 h.[30]	68 heures | 54 heures	72 heures	60 heures [47]
Le travail souterrain est-il interdit ?	Aux jeunes filles, oui	Aux jeunes filles, oui	Aux jeunes filles, oui	Aux jeunes filles, oui	Oui, aux femmes et aux garçons de moins de 13 ans dans les mines	Oui	Oui
Le travail auprès des machines dangereuses est-il interdit ?	Pas expressément [3]	En général, oui [15]	—	Aux jeunes filles, oui	Oui	—	Oui
La Troisième Catégorie comprend :							
Femmes âgées de	16 ans et au-dessus	16 ans et au-dessus	21 ans et au-dessus	18 ans	18 ans	15 ans et au-dessus	16 ans et au-dessus
Durée du travail : par jour	11 heures	*Forges* 11 heures [13] | *Mines* 10 h. [14] et 9 h. (Houillères)	Pas prévu par la loi	Actuellement : 10½ h. | A partir de 1904 : 10 h.	*Forges* 12 heures | *Mines* 10 heures	12 heures	Le travail dans les mines es interdit ; autrement, pa prévu par la loi
Durée du travail : par semaine (Maximum des heures de travail.)	65 heures [4]	66 heures | 60 h. et 54 h. (Houillères)	Pas prévu par la loi	63 h.[28] | 60 h.	68 heures | 54 heures	72 heures	Oui
Le travail souterrain est-il interdit ?	Oui	Oui	Non	Oui	Oui	Oui	Oui
Combien de semaines après l'accouchement peuvent-elles reprendre le travail ?	4 semaines [5]	4 semaines—6 semaines [16]	4 semaines	Pas prévu par la loi	4 semaines [37]	4 semaines [44]	—
Leur est-il interdit de travailler auprès des machines dangereuses ?	—	En général, oui [15]	—	Oui	Oui	—	—
La Quatrième Categorie comprend :							
Les ouvriers adultes âgés de plus de	16 ans	16 ans	16 ans	18 ans	18 ans	15 ans	16 ans
Durée du travail : par jour	[6]	*Forges* 11 heures [13] | *Mines* 10 h. [14] et 9 h. (Houillères)	Pas prévu par la loi	S'ils travaillent ensemble avec des personnes protégées : 10½ h.[28] | Seuls [28] 12 h.	Pas prévu par la loi	Pas prévu par la loi	Pas prévu par la loi [49]
Durée du travail : par semaine (Maximum des heures de travail.)	Legislation des états	60 heures | 60 h. et 54 h. (Houillères)	Pas prévu par la loi	—	Pas prévu pas la loi	Pas prévu par la loi	Pas prévu par la loi [48]
TRAVAIL DE NUIT :							
Définition par la Loi des heures de nuit	8½ h. soir à 5½ h. matin	8 h. soir à 5 h. matin	9 h. soir à 5 h. matin	9 h. soir à 5 h. matin	9 heures soir à 5 heures matin	(8 h.soir-5 h.matin (1er oct.-31 mars) [45] ; 9 h.soir-5 h.matin (1er avril-30 sept.))	9 heures soir à 5 heures matin
Durée du travail de nuit pour les Enfants	Interdiction	Interdiction	Interdiction	Interdiction [31]	Interdiction	Interdiction	Interdiction
Durée du travail de nuit pour les Adolescents	[7]	Interdiction [17]	14-16 Interdiction pour les filles [23] | 16-21 Permis [24]	Interdiction [31]	Permis [38]	Interdit aux jeunes filles, et à partir de 1907, aux femmes en général	Interdiction
Durée du travail de nuit pour les Femmes	Interdiction	Interdiction	Pas prévu par la loi	Interdiction [32]	Interdiction	—	Pas prévu par la loi
Durée du travail de nuit pour les Hommes	Permis	Permis	Permis	Permis	Permis	Permis	Permis
TRAVAIL SUPPLÉMENTAIRE :							
Le travail supplémentaire est-il admis ?	Oui [8]	Oui	Pas prévu par la loi	Oui	Oui	—	Oui
Y a-t-il des interruptions pendant le travail ?	Oui	Oui	Oui	Oui	Oui [39]	Oui	Oui
Durée de ces interruptions pour les Enfants	½ heure	—	1½ heures [25]	1 heure	Dans les mines après 5½ h. Après 8 heures, 1½ h. Forges, durée du repos 1½ h.	*Femmes et Enfants :* 1 heure par journée de 8 h. 1½ h. par journée de 8-11 h. 2 h. par journée au-dessus 11 h.	2 heures
Durée de ces interruptions pour les Adolescents	2 heures [9]	1½ heures	1½ heures [25]	1 heure			2 heures
Durée de ces interruptions pour les Femmes	[10]	1½ heures	1½ heures [25]	1 heure			—
Durée de ces interruptions pour les Hommes	Pas prévu par la loi	1½ heures [18]	—	—	—	—	—
DIMANCHES ET JOURS FÉRIÉS :							
Nombre des jours fériés légaux	Les dimanches et les jours fériés reconnus par les autorités des divers états. [11]	*Forges* 52 [19] | *Mines* 52	52 [26]	52 jours [33] et 8 jours fériés pour les catégories protégées	52 dimanches, 2 jours fériés, 8 demi-journées de congé	52 jours pour premières catégories protégées	Pas prévu par la loi

[1] Seulement lorsque l'enfant n'est plus soumis à l'obligation scolaire. Dans les mines le travail des enfants âgés de moins de 13 ans est interdit ; dans les laminoirs et forges, l'âge minimum d'admission au travail est de 14 ans.

[2] Travail interdit dans les laminoirs et forges à feu continu.

[3] Des mesures appropriées doivent être prises dans le but de sauvegarder la sécurité des travailleurs.

[4] Travail auprès des machines interdit aux femmes en général de même que le travail dans les forges et dans les mines de zinc et de plomb.

[5] Travail pendant les 5e et 6e semaines seulement autorisé sur production d'un certificat médical.

[6] Le maximum de la durée du travail des ouvriers adultes est fixé par les autorités législatives des divers Etats. En Prusse il est fixé par les autorités supérieures des mines.

[7] Dans les mines de houille est interdit l'emploi de garçons avant 5 heures (samedi 4 heures) du matin et, si le travail du jour se fait en deux équipes, après 11 heures du soir (le lundi 1 heure du matin).

[8] Permis jusqu'à concurrence de 60 heures par semaine, dans les mines de houilles d'Oppeln (Silésie) seulement.

[9] Une heure si le travail avant et après l'interruption ne dure que chaque fois 4 heures.

[10] Une heure et demie pour les femmes qui soignent un ménage.

[11] Conformément à l'ordonnance du Chancelier de l'Empire en date du 5 février, 1895, le travail du dimanche et des jours fériés peut être admis sous de certaines conditions seulement.

[12] Dans les établissements industriels il est interdit d'employer des enfants de moins de 14 ans dans les mines, les enfants de 12 à 14 ans peuvent être exceptionnellement occupés à des besognes particulièrement faciles et appropriées à leur âge, à condition que ce travail ne les empêche pas de fréquenter l'école et que l'autorité compétente des mines donne son consentement.

[13] Y compris la montée et la descente. En cas d'événements imprévus, l'autorité compétente peut accorder une prolongation de la durée du travail dans les mines.

[14] Y compris la descente et la montée, ainsi que les repos provenant de la nature même de l'exploitation, à moins que les ouvriers puissent remonter pendant ces repos. Dans ce cas le temps employé pour monter et redescendre n'est pas compris dans le durée du travail. Exceptionnellement la durée du travail effectif peut être portée de 10 à 12 heures dans les exploitations minières dans lesquelles au moment de la promulgation de la loi du 27 juin 1901 la durée de travail était plus longue et lorsqu'une diminution de celle-ci risquerait de compromettre l'existence même de l'exploitation. Des exceptions au principe de la journée de 9 heures peuvent être accordées par le Ministre de l'Agriculture pour les mines de houille situées dans les Alpes, sans que toutefois le nombre d'heures de travail fournies par semaine ne puisse excéder 54.

[15] Dans les mines les jeunes filles de moins de 16 ans, ainsi que les jeunes gens de moins de 18 ans ne devront être occupés qu'à des besognes appropriées à leur âge et n'entravant pas leur développement corporel.—(Loi du 21 juin 1884.)

[16] Éventuellement après un délai moins long, mais alors le certificat d'un médecin autorisé est exigible.

[17] Permis aux adolescents de 14 à 16 ans, employés dans les forges qui travaillent sans interruption.

[18] Dans les établissements à travail continu, les repos pourront être également diminués.

[19] Dans les forges le travail du dimanche peut exceptionnellement durer plus de 3 heures. Toutefois chaque ouvrier devra bénéficier tous les 15 jours de 24 heures de repos à prendre en une ou deux fois et qui devra tomber soit sur un dimanche, soit sur un ou deux jours de semaine.

[20] Dix heures et demie dans les mines, 10 heures dans l'industrie métallurgique ; cf. durée du travail des jeunes filles de 16 à 21 ans.

[21] Durée du travail : 9 heures dans les mines de houille de Mariemont ; 10½ heures dans les minières, forges, fonderies ; 11 heures dans les autres mines de la grande industrie métallurgique (y compris la montée et la descente, mais pas les repos).

[22] Dix heures et demie dans les mines souterraines y compris la descente et la montée ; pour le reste cf. durée du travail des jeunes filles de 16 à 21 ans.

[23] Lorsqu'ils sont aussi occupés dans la journée, la durée totale du travail ne doit pas excéder 10 heures et ne doit pas aller au delà de minuit, dans les travaux souterrains des mines. Dans les forges le travail de nuit des adolescents est permis lorsqu'ils travaillent dans des établissements à feu continu.

[24] Dans les mines seulement pour les travaux à la surface : l'allumage des lampes. Dans les forges seulement lorsqu'ils travaillent directement auprès des hauts fourneaux.

[25] Dans les travaux souterrains des mines un huitième du temps passé dans la mine.

[26] Dans les établissements à travail continu, il doit être accordé aux adolescents un jour de repos plein et entier tous les 15 jours. L'emploi des enfants est interdit le dimanche.

[27] L'emploi des enfants de 12 à 13 ans admis seulement lorsque ceux-ci ne sont plus soumis à l'obligation scolaire et sur production d'un certificat médical constatant que l'enfant est apte au travail auquel on le destine ; dans les fonderies ; interdiction d'employer des jeunes gens au-dessous de 16 ans pour balayer les poussières.

[28] Repos non compris ; exceptions admises en cas de force majeure.

[29] Non compris la descente et la montée, ni le repos d'une heure. Le travail effectif dans les mines ne doit pas dépasser 5 heures.

[30] Dans de certaines mines spécialement designées par décrets qui, par suite de leur situation naturelle exigent une exception, des jeunes gens de moins de 18 ans peuvent être employés entre 4 heures du matin et minuit, pendant 8 heures de temps et séjourner au plus 10 heures dans les mines.

[31] Permis aux garçons et jeunes gens dans les exploitations à travail continu, ainsi qu'en cas d'accidents ou de force majeure.

[32] Dans les mines où s'exécutent des travaux souterrains, est licite l'emploi nocturne des femmes adultes à l'allumage des lampes mais seulement pendant 7 heures au maximum. Les femmes adultes peuvent également être astreintes à 10 heures de travail de nuit (avec 2 heures de repos) en cas de nettoyage des machines, en cas d'accident ou de force majeure.

[33] Les jours de repos ne doivent pas forcément tomber sur un dimanche. Le repos hebdomadaire n'est pas obligatoire pour les hommes adultes.

[34] Les enfants ne peuvent être employés dans les forges que lorsqu'on adopte le système des équipes alternantes travaillant chacune soit une demi-journée seule-

ment, le matin
sur deux ; l'or
du samedi lors
[35] Travaux
mines, sont co
travaux à la s
[36] Treize an
[37] Une fem
[38] Les jeun
fabriques de fe
et de métaux
doivent pas ét
ni en 3 équipes
2 jours de repo
[39] Conforme
travail pour les
équipes, dans
terminée pend
augmentée de
totale du trava
[40] Les enfan
la loi de 1902 é
[41] Pour les
[42] Les enfan
vigueur de la l
[43] Est interd
travaux ci-apr
des monte-cha
tilation dans le
l'intérieur de
contenant de

VAIL DANS LES MINES ET LES ÉTABLISSEMENTS DE L'INDUSTRIE MÉTALLURGIQUE.

ith another valuable Table, relating to work in Mines, compiled by the Association.]

NORWÈGE	PAYS-BAS	RUSSIE.	SUÈDE.	SUISSE.	MISSOURI.	ALABAMA.	PENSYLVANIE.	NOUVELLE GALLES DU SUD.	NOUVELLE-ZEALANDE.
ois des 27 juin 1892 et 21 juillet 1894	Loi du 5 mai 1889 Décret du 21 janvier 1897	Lois des 13 juin 1884, 2/14 juin 1897, 18 juin 1882. Loi de 1884 Loi du 24 avril 1890 Décrets des 20 septembre 1892 8 décembre 1897 3 janvier et 24 février 1898	Loi du 17 octobre 1900	Loi fédérale du 25 juin 1881 et Lois cantonales	Loi de 1901	Loi de 1892-1893	Loi de 1895	Loi du 28 décembre 1901	Coal Mines Act, 25 septembre 1891 ; Mining Act, 21 septembre 1891
Deux et trois	Trois	Quatre	Trois		Quatre	Deux	Deux, éventuellement trois [61]	Quatre	Trois, éventuellement quatre
12 ans	12 ans	12 ans	12 ans [56]		12 ans [59]	10 ans [60]	*Anthracite* 14-15 ans [62] / *Lignite* 12-16 ans [63]	14 ans	13 ans
12 à 14 ans [49]	12 à 16 ans. Le travail dans les mines est interdit ; autrement :	12 à 15 ans	12 à 13 ans		12 à 14 ans	10 ans	Id. Id.	14 ans	13 ans
6 heures	11 heures	8 heures	6 heures		Le travail dans les mines est interdit	Le travail dans les mines est interdit	Le travail dans et autour des mines est interdit	Le travail dans et autour des mines est interdit aux enfants	Le travail dans et autour des mines est interdit aux enfants
36 heures	66 heures	48 heures [51]	36 heures [57]						
Oui	Oui, aux femmes et aux garcons âgés de moins de 16 ans	Oui	Oui, aux femmes et aux garcons âgés de moins de 14 ans		Oui, aux femmes et aux garcons âgés de moins de 12 ans	Oui, aux femmes at aux garcons âgés de moins de 10 ans	Oui, aux femmes en général	Oui, aux femmes et aux garçons âgés de moins de 14 ans	Oui
Oui	Oui	—	Oui		—	—	Oui —	Oui	Oui
14 à 18 ans	16 ans et au-dessus	15 à 17 ans	13 à 18 ans		—		15-18 ans —	14 à 18 ans [65]	13 à 18 ans
10 heures	11 heures	11½ h. [55]	10 heures		8 heures	—	— —	8 heures	8 h. sauf cas de force majeure
60 heures [50]	66 heures	67½ h.	60 heures [57 58]		48 heures	—	— —	48 heures [66]	48 heures
ux jeunes filles, oui	Non	Non	Oui, aux femmes et aux garcons âgés de moins de 14 ans		Oui, aux femmes en général	—	Oui, aux femmes en général	Non	Non
Oui	Oui	—	Oui		—	—	—	Oui	Oui
ans et au-dessus	16 ans et au-dessus	17 ans et au-dessus	18 ans et au-dessus		—	—	—	18 ans et au-dessus	18 ans et au-dessus
. ouvriers adultes	11 heures	11½ h.	Pas prévu par la loi						
. ouvriers adultes	66 heures	67½ h.	Pas prévu par la loi						
Oui	Oui	Oui	Oui						
4-6 semaines	4 semaines	Pas prévu par la loi	4 semaines		Le travail dans les mines est interdit aux femmes	Le travail dans les mines est interdit aux femmes	Le travail dans et autour des mines est interdit aux femmes	Le travail dans et autour des mines est interdit aux femmes	Le travail dans et autour des mines est interdit aux femmes
Oui	—	—	—						
18 ans	16 ans	17 ans	18 ans		—	—	—	18 ans	18 ans
t être réglementeé ans les exploitations angereuses	Pas prévu par la loi	11½ h.	Pas prévu par la loi		8 heures			8 heures } au fond 48 heures }	Pas prévu par loi sauf pour ceux chargés de la surveillance des machines à vapeur et ceux qui traitent les produits des mines : 8 heures
	Pas prévu par la loi	67½ h.	Pas prévu par la loi		48 heures			et pour les personnes chargées des machines à eau, vapeur, électricité, petrole, air, etc., et de celles qui traitent les produits des usines	
. soir à 6 h. matin	7 h. soir à 5 h. matin	9 h. soir-5 h. matin, hiver / 10 h. soir-4 h. matin, été	7 h. soir à 6 h. matin						
Interdiction	Interdiction	Interdiction	Interdiction						
Interdiction [51]	Interdiction [53]	Permis	Interdiction						
Permis	Interdiction	Permis	Permis						
Permis	Permis	Permis	Permis						
Oui	Oui	Oui	—						
Oui	Oui	Oui	Oui						
½ heure	*Femmes et Adolescents :* 1 heure entre 11 h. du matin et 3 h. du soir	Avec 1 heure d'interruption lorsque le travail dure plus de 10 heures	Repos convenable		Pas prévu par la loi	Pas prévu par la loi	Pas prévu par la loi	Pas prévu par la loi	Pas prévu par la loi
2 heures [52]			Pas prévu par la loi						4 heures après 8 heures de travail consécutives pour les personnes chargées de la surveillance des machines à vapeur ou de celles qui traitent les produits des mines [67]
—									
—	—	—						—	52 dimanches [68]
les catégories protégées, les dimanches les jours fériés égaux.	Les dimanches	Les dimanches et 17 jours fériés	Pour les catégories protégées les dimanches et jours fériés légaux		—	—	—		

Les mines et carrières situées en Suisse tombent, dès qu'on y emploie plus de 5 ouvriers, sous l'application de la loi fédérale du 25 juin 1881 sur l'extension de la responsabilité civile. Il n'y a pas de législation fédérale réglementant la durée du travail dans ces exploitations et celle-ci est à fixer par les lois cantonales. Ainsi la loi bernoise de 1853 sur les mines ne contient pas de dispositions relatives à la durée du travail. La surveillance du travail dans ces exploitations incombe à l'inspecteur des mines. D'après les rapports annuels de ce fonctionnaire (années 1900 et 1901) il y a en Suisse 128 exploitations minières occupant ensemble 1,641 ouvriers. A vrai dire il n'y a que 20 mines proprement dites avec 242 ouvriers. De celles-ci 14 se trouvent dans le canton du Valais et occupent ensemble 150 ouvriers.

l'après midi, soit une journée entière mais alors seulement un jour des équipes est changé tous les huit jours. Est interdit le travail l'enfant a déjà travaillé 5½ heures un autre jour de la semaine.
errains et à la surface, y compris la descente et la montée ; dans les férés comme adolescents les enfants âgés de plus de 12 ans pour les ce et de plus de 13 ans pour les travaux au fond.
r production d'un certificat médical.
e 18 ans n'est pas protégée en cas d'accouchement.
ens de 14 ans sont admis au travail de nuit dans les fonderies et 16 ans ils sont admis au travail de nuit dans les fabriques de cuivre ca. Les adolescents qui travaillent auprès des hauts fourneaux ne mployés plus de 7 nuits consécutives dans l'espace de 2 semaines, huit heures consécutives à moins que le travail ne soit coupé par tre chaque équipe.
ut aux articles 40, 51, 54 de la loi industrielle les suspensions de pos peuvent être fixées à des heures différentes pour les diverses forges à travail continu. Lorsqu'une opération ne peut pas être les heures de travail ordinaires, la durée du travail peut être minutes à condition que celles-ci soient comptées dans la durée

âgés de 10 ans accomplis qui, au moment de l'entrée en vigueur de nt déjà employés, peuvent continuer leur travail.
nts de 10 à 12 ans, 8 heures par jour.
âgés de 11 ans accomplis, déjà employés au moment de l'entrée en ouvent continuer leur travail.
emploi d'enfants âgés de moins de 15 ans et de femmes mineures aux ésignés : *Mines :* taille des roches, construction des puits, service s, élévateurs, etc., manipulation des pompes at appareils de ven- avaux au fond, transport de fardeaux sur la tête ou les épaules dans ine. *Forges :* fonte des minerais suivants : minerais de plomb ent, minerais contenant du zinc, de l'arsenic, de l'antimoine, du mercure ; rôtissage en chambre, en tas, etc., d'alliages contenant de l'arsenic sulfureux et de l'antimoine en général et en particulier des minerais de cuivre contenant de l'arsenic (Ordonnance du 9 janvier 1903).

[49] Reprise du travail au bout de 3 semaines sur production d'un certificat médical.

[50] Lorsque le travail se fait en deux équipes, il peut commencer le matin à 5 heures et durer jusqu'à 11 heures du soir.

[51] Huit heures lorsque l'enfant n'est plus soumis à l'obligation scolaire, autrement 6 heures.

[52] La durée du travail peut être prolongée pendant un temps déterminé d'avance en cas d'accidents, etc.

[53] Des personnes de 16 à 18 ans ne doivent être employées dans les mines qu'à des besognes faciles.

[54] Peuvent être employés à des travaux faciles sur production d'un certificat médical. En été ils peuvent être employés au lavage à la main en dehors des heures de l'école.

[55] Dans les exploitations où ils sont employés à des travaux faciles, les adolescents peuvent travailler 10½ heures pendant les 5 premiers jours de la semaine à condition que la durée hebdomaire du travail n'excède pas 60 heures.

[56] Travail de nuit permis lorsque la nature de l'exploitation l'exige.

[57] Une heure à midi, ½ heure après 4½ heures de travail ininterrompu.

[58] Les jeunes gens de 14 à 16 ans peuvent être autorisés à faire du travail de nuit à condition que la durée du travail effectif ne dépasse pas 11 heures sur 24 heures.

[59] Lorsque la journée de travail est de 8 heures, elle doit être coupée par un repos après 4 heures de travail consécutif. S'il n'y a pas d'interruption pendant le travail, celui-ci ne doit pas excéder 6 heures.

[60] Y compris la descente et la montée. La veille d'un jour férié 10 heures et aussi lorsque le travail est continué pendant la nuit. La veille de Noël le travail doit cesser à midi. En cas de travail d'une durée de 18 heures fourni par deux équipes il est permis de travailler 12 heures par jour à condition que la moyenne du travail fourni par chaque ouvrier dans l'espace de 15 jours n'excède pas 9 heures par jour.

[61] Exceptionnellement admission au travail à 11 ans.

[62] Jusqu'à l'âge de 15 ans il doit être accordé à l'enfant le temps nécessaire pour fréquenter l'école.

[63] Dans les mines, forges et autres établissements industriels où l'on travaille à feu continu, la durée du travail des adolescents âgés de plus de 14 ans pourra être portée jusqu'à 12 heures par jour au maximum et ces heures pourront être réparties sur une autre période que celle comprise entre 6 heures du matin et 7 heures du soir à condition que le travail soit partagé en séries séparées les unes des autres par des repos de 8 heures.

[64] Admission au travail à 12 ans seulement lorsque l'enfant sait lire et écrire autrement 14 ans.

[65] La législation de l'Union interdit l'emploi des enfants au-dessous de 12 ans à des travaux souterrains.

[66] Il est interdit d'occuper des femmes en général ainsi que des garçons âgés de moins de 12 ans, à proximité des mines de charbon, mais ils peuvent être employés à des travaux de bureau.

[67] Le travail auprès des machines dangereuses est interdit.

[68] Les jeunes gens de moins de 16 ans ne peuvent être employés au chargement et au déchargement du charbon qu'en présence d'ouvriers au-dessus de 16 ans.

[69] Le travail auprès des broyeurs est interdit.

[70] Est interdit l'emploi des jeunes gens de moins de 18 ans au chargement et au déchargement des monte-charges, élévateurs, etc. Les jeunes gens de cet âge ne doivent pas être employés à l'intérieur des mines, à moins qu'ils n'aient fait un apprentissage de deux ans. Ces dispositions ne s'appliquent pas aux jeunes gens qui travaillaient déjà dans les mines au moment de l'entrée en vigueur de la loi.

[71] Non compris le temps employé à mettre en marche les machines, à l'allumage des fourneaux ou à leur extinction, ni le travail exécuté eventuellement en cas d'accident ou de force majeure.

[72] Ces ouvriers doivent bénéficier d'un repos de 4 heures après 8 heures de travail consécutives.

[73] Les ouvriers adultes qui travaillent 7 jours par semaine ont droit à 12 demi-journées ou 6 jours entiers de repos par an.

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REVIEW OF LEGISLATION, 1902.

INTRODUCTION.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

The British Empire.—The legislation of 1902 will be associated, in England, with an unambitious Licensing Act, with a highly controversial Education Act, and with the shilling corn duty from whose embers sprang a great fiscal war.

In other parts of the King's dominions local legislatures were at the same time grappling with similar problems. Tasmania was trying an experiment in local option. Ontario passed an adoptive Act (which was not adopted) for regulating druggists' licences. The Straits Settlements were making attendance at school compulsory on Malay children. Sierra Leone was dealing with Mohammedan education "on Western lines." Ontario was amending its Education Acts. India passed an Act (which has since been dropped) for increasing the stringency of countervailing duties on sugar. Queensland and Tasmania were introducing an income tax.

Throughout the British Empire, indeed throughout the civilised world, the review of contemporary legislation continues to present the same features of similar questions approached under different local conditions. "Each diversity is uniformity," said Montesquieu, "each change is constancy."

In India the Madras Legislature tried some interesting experiments in land law. They increased the power of taking over the management of land belonging to incompetent or extravagant owners, and endeavoured, as other Indian legislators had done before them, to place restrictions on the alienation of land and on the breaking up of large estates.

The consolidating Ordinance of the Straits Settlements for the regulation and protection of Chinese immigrants may be of interest in other parts of the world.

Mauritius, which is still governed by the French Civil Code, amended the provisions of that Code by improving the position of illegitimate children and making their legitimation easier. The same tendency is observable in the recent legislation of other States and Colonies whose common law is of English origin—for instance, in New South Wales.

The Commonwealth of Australia was still engaged with the initial problems of its constitution, and was passing laws for the regulation of the public service and for determining the Parliamentary franchise and the procedure at elections. New South Wales conferred the electoral franchise on women. The chief concern of Queensland was to make both ends meet in a period of financial stress. Western Australia had to legislate about mining development and the "rabbit pest." New Zealand was still amending its Old Age Pension Act and had begun to regulate motor-cars.

In South Africa, Cape legislation was still a blank, and the Natal legislation was of little importance. But for the Orange River and the Transvaal numerous Ordinances had to be passed, withdrawing martial law, declaring the common law, establishing High Courts, placing restrictions on the possession of arms and ammunition, and regulating a great variety of administrative matters.

West African legislation continued to illustrate the delicate questions arising out of the administration of protectorates and the relations between civilised and uncivilised races. The provisions regulating native labour in Lagos may be compared with those for Northern Nigeria.

The Dominion of Canada passed a stringent law for excluding foreigners from the coasting trade. Labour legislation came a good deal to the front in British Columbia. There was an Act for prohibiting the employment in certain cases of workmen who could not read the Act in some European language, another about compensation to injured workmen, and another directed against the practice of enticing workmen into the Province by deceptive representations as to the conditions of labour. Laws about workmen's compensation and trade disputes were also passed in New Brunswick, Ontario, and elsewhere. Quebec authorised the establishment of agricultural syndicates for the protection and defence of agricultural interests. In the West Indies several of the island legislatures were concerned with aids to distressed planters. Barbados was encouraging the manufacture of butter, oleomargarine, and butterine by exempting from import duty the packages and machinery required in the production of these articles. British Guiana was placing its aboriginal Indians under a Protector, and making stringent provisions against gambling, particularly against a special form of gambling introduced by the Chinese.

The review for the year, like that for the previous year, extends to foreign countries, among which Egypt is included. An amendment of the Egyptian criminal law was directed against cruelty to animals, and specifically prohibited ram-fighting and "the not uncommon pastime of drenching rats in petroleum and setting them on fire." An attempt was made to meet the financial difficulties arising in Egypt out of the immunity of Europeans from local taxation by appointing local commissions for assessing persons who had voluntarily agreed to be taxed. The law of military conscription was consolidated. A decree recognised the status

of native Protestant Churches with their own forms of government and their own codes of personal law.

Foreign Countries: Denmark.—In Europe, Denmark was busy with taxation Acts, imposing State taxes on income, capital, and property, and amending the laws on municipal taxes. The Rigsdag also, after much discussion, passed a series of Church laws which provided for the establishment of congregational councils, organised electoral congregations, and regulated the use of parish churches. It also enacted a law for the regulation of education in the higher national schools.

—— **France.**—France extended the Copyright Law of 1793 to sculptors and architects, and modified her patent law. She also amended her company law and established two new bounties in favour of the French merchant navy.

—— **Germany.**—The chief feature of the German legislation of 1902 was the Tariff Act, which was passed in view of the approaching termination of commercial treaties, and was intended to facilitate the conclusion of new treaties by the enactment of an "autonomous tariff" to take effect in the absence of special arrangements. As is well known, the passing of the Tariff Act of 1902 was a matter of great difficulty. The discussions in committee were so protracted that they had to be continued during the Parliamentary recess, and a special Statute had to be passed giving the legislators extra payment for their recess labours. Eventually, after a change in Parliamentary procedure, the bill was "closured" through the Reichstag, among scenes of great tumult. The only negotiations as yet opened under it, those with Russia, have so far been unsuccessful.

—— **Italy.**—The recent social legislation of Italy is of great interest and importance. A law of 1902 established an Office of Labour under the Minister of Commerce, charged with the duty of collecting and publishing information about the conditions of labour in Italy and elsewhere, wages, strikes, casualties, and similar matters, and the laws affecting labour in various countries. An upper Council of Commerce was at the same time instituted for examining questions arising between employers and workmen. Another law of 1902 regulated the employment of women and children and prohibited the employment of children under twelve. A law of 1901 created a National Insurance Society for providing pensions to workmen disabled by age or accident. The capital is formed partly from contributions from workmen desiring to benefit, and partly from State and private endowments. In 1903 the law about accidents to workmen was materially modified by the passing of an Act which required employers in certain forms of business to insure their workmen against such accidents. The principles of the law appear to bear a general resemblance to those of the English Workmen's Compensation Act. Italy has also been revising her bankruptcy law.

—— **The United States.**—In the United States there are forty-eight

legislatures, besides the central legislature consisting of Congress and Senate, but of these forty-eight as many as forty-one meet only in every alternate year, and thirty of these last meet in the years ending with odd numbers. Hence it comes about that in 1902 the State legislatures only passed 5,590 Acts as compared with 14,190 in 1901. The smaller number seems sufficient. It must, however, be borne in mind that of the 5,590 Acts all except 1,773 were of a local or private nature. Mr. Newton Crane's interesting summary shows that this mass of multifarious enactments is full of ingenious experiments for alteration of constitutional, criminal, and civil law. There is a tendency to increase the "veto" power of the Governor, and also his salary. Attempts have been made to overcome the indifference of electors by treating constitutional amendments as a portion of the "party ticket." The "grandfather clause" is one of the many devices for withholding the franchise from negroes. Oregon provided machinery for the popular "initiative" and the "referendum" in legislation. The assassination of President McKinley led to an increase in the stringency of criminal law dealing with offences against the State. Attempts to impose death duties did not meet with great success. There were numerous experiments both in temperance legislation and in labour legislation, and motor-cars engaged the attention of several legislatures. Altogether an interesting and suggestive bill of fare.

Statute Law Revision.—It is satisfactory to find that most of the colonial legislatures, unlike the legislature at Westminster, are still actively prosecuting the work of statute law revision and consolidation.

FOREIGN.

1. DENMARK.

[*Contributed by* GEORGE BROCHNER, ESQ., *of Copenhagen.*]

The Session of the Danish "Rigsdag," which came to a conclusion on May 13th, was not only a very long one, but an exceptionally busy one, and the number of bills passed—sixty-seven out of eighty-seven laid before the Legislature—means a record in the annals of the Danish Parliament. This may be more easily understood when it is remembered that the Session was the second of the new *régime*, the first having, to a great extent, been applied to preparatory work.

The budget was not possessed of any special interest, and took its usual course.

Taxation.—Of far more importance were the Taxation Bills, which, after many years of futile discussion, were eventually passed. There were three Bills:—

1. State tax on income and capital.
2. Tax on property, in lieu of all previous State taxation on property.
3. Revision of the laws dealing with municipal taxation.

1. An income tax with sliding scale of 1·3—2·5 per cent., with certain reductions and modifications in favour of small incomes; limited companies are not exempt from this tax. The smallest percentage applies to incomes of less than 2,000 kr., and the highest to incomes above 100,000 kr. The capital tax is 0·6 per mille, with some modifications.

2. The property tax, which does away with all previous taxes on property, amounts to 1·1 per mille on all property according to its value in the open market; excluded from this tax is live stock, as are also machinery, implements, etc. This tax, too, is subject to modifications and reduction in certain cases.

3. Various alterations in the municipal taxation on personal incomes and property and State grant to the municipalities, from the financial year 1904-5, of 1,500,000 kr.

The new taxation laws are calculated to cost the Exchequer about 700,000 kr. annually.

Church.—Next in importance come the bills dealing with matters concerning the Church, which likewise had given rise to much and protracted discussion, both in and out of the House. Here, too, there are three Bills:—

1. About congregational councils.
2. About elective congregations.
3. About the use of the churches.

1. This Law provides for the establishment of a council for each congregation or parish with a church in the country. In the country the congregational council consists of the pastor and not less than four persons belonging to the parish and to the State Church. The pastor is chairman of the council. Every person above twenty-five years and who has resided a year in the parish has a vote, and is eligible, unless disqualified by sentence, dishonourable living, etc.

2. The Act about elective or electoral congregations takes the place of and supersedes previous Laws on this matter. Its most material point is its doing away, under certain conditions, with the regulation imposing upon electoral congregations the building of their own church. An electoral congregation can be formed by twenty fathers of a family or owners of a separate household belonging to the State Church leaving their parish or parishes and joining together in supporting a clergyman of the State Church.

3. The most important clause in this Act is the right it gives to one or more of the parishioners to have another clergyman of the State Church than their own officiate in the parish church, if they so desire, at divine services, baptisms, etc., provided the pastor of the parish gives his permission. Should the pastor refuse to give his permission, the matter can be brought before the Bishop or the Church Minister.

Education.—Another important Act deals with Higher National Schools, a reform much criticised by some, as it is lauded by others. It provides further education for children in continuation of the national schools—

(1) in intermediate schools, with four classes, closing with an "Intermediate School Examination"; and

(2) in the Gymnasium, with three classes, ending with the "Students' Examination." The instruction here can follow one of three lines: (i.) classic linguistic; (ii.) modern linguistic; (iii.) mathematics and natural science.

Literary and Art Copyright.—Of importance is also the Act about protection of literary and artistic rights, enabling Denmark to join the Berne Convention of 1886.

Miscellaneous Bills.—Bills were also passed about the erection of a large national hospital outside Copenhagen, about the rates and the Board arrangements of the State Railways, etc.

Judicature.—The reform in the administration of justice is still before

the House (which after a General Election assembled early in October for the ordinary Session) and has been discussed at great length.

Another bill yet undecided, and which has caused much stir, is the proposal to introduce corporal punishment for ruffians. Still more dissent has been caused by the Extension of Municipal Suffrage Bill, which in its present radical shape has apparently little chance of passing the Upper House.

Democracy and Socialism.—A feature of mark in the proceedings within the Legislature during the last year is the increased divergence between the democratic Government (Reform Left) and the Social Democrats.

2. EGYPT.

[*Contributed by* W. E. BRUNYATE, ESQ., *Khedivial Counsellor.*]

Decrees of General Public Interest—21.

Criminal Law.—A Decree of June 5th extends the protection accorded to animals by the criminal law. Closely following the Penal Code of New York, it is made an offence to leave an animal in confinement without necessary food, water, air, or shelter; ram-fighting and contests between other domestic animals were specifically forbidden. The not uncommon pastime of drenching rats in petroleum and setting them on fire is struck at by the prohibition of the torture of animals, other than domestic animals, which have first been deprived of their liberty, the employment of purposeless cruelty in killing such animals being also prohibited. The existing provisions for the protection of domestic animals are re-enacted. The Mixed Court of Appeal having approved the Decree, it is applicable to Europeans; to render such approval legal, the maximum penalty is restricted to a fine of £E.1, or a week's imprisonment.

Criminal Procedure (4).—Two of these Decrees (January 17th and June 16th) confer on certain railway officials and on the Alexandria Municipal Engineer the powers of officers of judicial police for offences connected with the services to which they are attached. A Decree of April 10th empowers criminal tribunals to order payment by solvent prisoners of the fees of advocates appointed by the tribunal to defend them. A second Decree of the same date revises the scale of payments to medical experts.

Finance (7).—A Decree of March 1st extends the house tax to the town of Helwan. A Decree of March 17th provides for the imposition of additional taxation (in no case exceeding £T.50 per feddan) on lands benefiting by perennial irrigation as the result of the Aswan dam and the works subsidiary thereto. By Decree of May 21st (approved by the Powers) the Ministry of Finance is empowered, with the consent of the Caisse de la Dette, to increase up to 55 per cent. the proportion of railway receipts (45 per cent.) which the settlement of 1885 allows to be devoted to working expenses. By Decree of June 16th the import of tobacco is permitted from countries

other than those which have concluded commercial treaties with Egypt, subject to slightly increased customs dues. The abolition of octroi dues in Cairo and Alexandria by Decree of November 29th renders obsolete a large mass of legislation. As the Cairo octroi dues were contingently charged in favour of the bond-holders, and as the same Decree assigns to the municipality of Alexandria sundry additional sources of revenue to make good the loss of their octroi receipts, the consent of the Powers was required to the Decree. The annual Budget and annual Corvée Budget complete the list of Finance Decrees.

Irrigation (2).—Following the precedent of former years, power was given to the Minister of Public Works, by Decree of April 4th, to prohibit the sowing of maize, etc., during the period of low Nile. A month later the Decree was amended and replaced by that of May 8th.

Legislation.—The constitution of the Consultative Committee of Legislation was amended by Decree of May 17th, and the earlier Decrees on the subject repealed.

Local Government.—Local government is seriously hampered in Egypt by the fact that, owing to the immunities of Europeans, local taxation is in general impossible. In the town of Mansura this difficulty has for a number of years past been met by the principal inhabitants voluntarily agreeing to assessment by the Local Commission. A similar Local Commission has now, by Decree of May 22nd, been established for the town of Medinet-el-Fayoum. The Commission consists of four native members elected by the native taxpayers, four European members (not more than two being of the same nationality) elected by the European taxpayers, and three *ex-officio* members (including the Mudir as president). Taxes are raised from persons who have undertaken, in writing, to pay them. The powers of the Commission extend to lighting, water supplying, paving, sanitation, and similar matters of public interest. Any single undertaking the cost of which exceeds £E.200 requires the consent of the Ministry of Public Works. With the like consent, loans not exceeding in the aggregate £E.10,000 may be raised. Salaried public servants, consuls, and persons in consular employ are disqualified from election, and members of the Commission are forbidden to enter into contracts with it.

Military Conscription.—A Decree of October 4th consolidating the law as to military conscription and repealing twenty-one earlier Decrees is of interest as being the first Decree to be promulgated in English and Arabic instead of in Arabic and French (English and Arabic being the only languages in connection with the administration of the recruiting law). The term of military service is fixed at five years, followed by a further period of five years either in the police or coastguard or in the reserve. Subject to the exemptions recognised by the Decree (the principal exemptions being those for family reasons, on educational or religious grounds, and by reason of Government employment

and that of Bedouins), every Egyptian youth takes part in the ballot in the year in which he attains the age of nineteen years. Prior to ballot, but not afterwards, he may purchase exemption by the payment of £E.20. Recruits are then called up as needed, ordinarily some three years later. The balloting lists are drawn up by the village authorities and the balloting operations conducted by Commissions composed of three military officers, a civil official, and two omdehs (village headmen). The principal changes of substance introduced by the Decree are the exemption of all Government cadre employees, the transfer of jurisdiction with reference to offences against the law by civilians from court-martial to the ordinary Courts, a provision that offences by persons liable to service may be punished by immediate enlistment for an extended period instead of by imprisonment, the abolition of the responsibility of the head of a family for the desertion of a member of the family (except in case of complicity), the regularisation of selection for the police, the determination of the circumstances under which the reserve may be called out, provision for the enlistment of volunteers and of boys, and the appointment of inspecting officers.

Personal Law: Native Protestants.—The various indigenous Christian communities in Egypt are in most matters of personal law entitled to the enjoyment of their own customary law administered by their own religious authorities. With the spread of missionary effort there has arisen exactly the difficulty (that of Churches with no settled personal law) which in India has given rise to legislation as to native Christians. Of these Churches. the United Presbyterian Church of Egypt (consisting of the converts of the American Presbyterian Mission) is alone numerically important. A distinct community of native Protestants was, on the demand of the American Mission, recognised by the Sublime Porte in 1850, and in Egypt in 1878, but the limits of its membership had never been defined. Advantage has now been taken (by Decree of March 1st) of a request from the United Presbyterian Church for legislative recognition of its own internal organisation to reorganise the native Protestant community in such a manner as to meet the needs of all Protestant Churches. Every organised body of Christians in Egypt not forming a distinct community and not being part of a larger organisation in Egypt is regarded as a Protestant Church. A recognised Protestant Church is a Protestant Church recognised in manner prescribed by the Decree. A native Protestant is then defined as an Ottoman subject domiciled or ordinarily resident in Egypt who is (1) a member or adherent of a recognised Protestant Church; or (2) has been individually recognised in the prescribed manner; or (3) being Protestant by descent, has not lost that quality. The community is governed by a General Council composed of delegates elected or appointed by recognised Protestant Churches, with a president and deputy. The General Council accords recognition to Protestant Churches and to individual Protestants, elects the president of the community and his deputy, is the competent

authority in matters of personal law and of charitable trusts where Protestants alone are concerned, accords licences to celebrate marriages to the chiefs of Christian Churches not having an ordained clergy, keeps marriage registers, and regulates its own procedure. The code of personal law for the community is that approved by the two Protestant Churches recognised as such by the Decree, but as such code recognises divorce, there is an express saving of the right of any individual Church not to recognise the remarriage of divorced persons for purely spiritual purposes. Substantial administrative control is reserved to the Ministry of the Interior. The Decree is a purely facultative one, but it would appear that the only tribunal open to native Protestants not taking advantage of it will be that of the cadi.

Public Servants.—A Decree of December 22nd provides (by way of amendment to an earlier Decree as to discipline) that every person who enlists in the police or in the service of the Slavery Department for a fixed term of years shall, for disciplinary purposes, be placed upon the same footing as a conscript. It further saves the right of the Ministry to dismiss any such person at pleasure. In the absence of further statutory provision, it is perhaps not perfectly clear what are the rights of the Government against a voluntary recruit who declines to carry out his contract.

Sponge Fisheries.—Sponge-fishing in territorial waters, except by virtue of a special authorisation, having been forbidden by a Decree of 1886, a Decree of April 24th purports to regulate the granting of authorisations. Licences are to be granted from year to year by the Ministry of Finance, which fixes the conditions of the licence. The agents of the coastguard and of the Customs Department are empowered to seize unlicensed boats, to confiscate all sponges found therein, and to levy a fine of £E.10, realising such fine, if necessary, by the sale of the boat. The employment of diving dresses is prohibited, under penalty of forfeiture. The somewhat patriarchal terms of the Decree are explicable by the primitive character of the fishing population, and the remoteness of the scene of operations.

Sudan Refugees.—After the abandonment of the Sudan, a series of decrees enacted that all claims against the Government in respect of the Sudan, including claims for pensions by employees, not presented by a fixed date should be barred. The Decrees in question operated to bar the claims —real or fictitious—of numerous persons then in captivity who, after the reconquest of Sudan, returned to Egypt. To meet their case a special grant was made in 1900, as a matter of grace, and divided amongst them. The Government was then sued by a military officer who claimed that, according to the regulations, he ought, while in captivity, to have been considered as on active service and that his right to pension, not having accrued until his release, was not barred by the Decrees above mentioned. The Courts having adopted this contention, a Decree of March 1st enacted that the earlier Decrees should be regarded as having barred all other similar claims.

3. FRANCE.

[*Contributed by* GEORGE R. BARCLAY, ESQ., LL.B.]

The following is a summary of the chief Acts of a general bearing passed in France during the year 1902. Others are of mere local interest.

Copyright.—The Law of March 14th, 1902, extends the Law of July 24th, 1793, passed on the proposition of Lakanal, which allows "all authors, composers of music, designers, draughtsmen, and other artists who get paintings or drawings engraved," the sole right of selling or disposing of their works in the boundaries of the Republic. An Act of July 14th, 1856, adds a period of fifty years after death for the benefit of the deceased's representatives. It is extraordinary that sculptors should not have been considered worthy of the same protection, and such an omission of the law seems strange. But during this period, sculptures were still difficult to counterfeit, and infringements were rare. And from 1793 to about 1860 the Courts were very firm in applying the law to sculptors as well. From 1860, however, the discovery of galvanoplastics simplifying the task of reproducing, the Courts wavered in the absence of texts. The Act passed in March, 1902, extends the 1793 Act to "architects and sculptors." It also adds a paragraph as follows: "The same right shall belong to sculptors and art designers."

Patents.—The April 8th, 1902, Act modifies the Law of July 5th, 1844, on patents. It forces the authorities to publish immediately and without delay the descriptions and designs accompanying demands of patents. The patentee may nevertheless make a special request that his designs be not published before the expiration of one year. The fees are: 500 francs (£20) for a five years' patent; 1,000 francs (£40) for ten years; 1,500 francs (£60) for fifteen years. These sums are payable by annuities of 100 francs (£4). The previous legislation cancelled the right of the patentee who was in arrear of one annuity. By the Law of May 31st, 1856, the patentee was treated more severely; the fee had to be paid before the beginning of each year. The new Law has gone over to the other extreme, and he is now treated with great leniency. The patentee has a delay of three months after the beginning of each year to pay his annuity, but he shall pay a supplement of 5 francs (4*s.*) for each month in arrear. This additional sum must be paid at the same time as the annuity.

Merchant Navy.—The Law of April 10th, 1902, establishes two new bounties in favour of the French merchant navy. Since about 1670, under Colbert's ministry, there has always been in France a system of protection for the mercantile navy. The ultra-protectionist period began with the Navigation Act of 1793, which established a monopoly of equipment and of construction. In 1816 the foreign flag tax was introduced. In 1822 an important modification was brought about by a convention which exempted

the United States' ships from duty. From 1860 to 1872 British, Canadian, and American ships were exempted from the flag tax. At first, the fee had been 60 francs (£2 8*s*.) per ton, and later it was reduced to two francs. In 1869 the foreign flag tax was entirely abolished. The only advantage which the French merchant navy still retained over foreign navies in France was the monopoly of home coasting trade. The natural consequence of this was a great discouragement of the French owners and builders. The former found themselves handicapped by the British owners, who, possessing more and larger ships, could transport goods more cheaply and faster. The latter were ousted, because the owners bought their ships in England and Scotland, where they paid less for them and where they were more quickly built. A reform was absolutely necessary, and the Chamber of Deputies set to work making an enquiry into the matter. In 1872 the flag tax was re-established, but immediately abolished again.

It was not until 1881 that premiums were first granted under the name of "primes à la navigation et à l'armement." In 1893 this premium was extended to constructors. Unfortunately, both of these Laws were much more favourable to sailing vessels than to steamships, and statistics show that under the Law of 1893, 175,501 tons were built abroad, whilst only 69,105 tons were built in France—that is, 39 per cent. The following is a summary of the new Law:—

Art. 1.—In return for the heavy charges[1] imposed upon the merchant navy, and in order to encourage the French shipping industry, two bounties have been created. These are the "compensation d'armement"[2] and the "prime à la navigation."[3]

In companies owning ships, the chairman and the managing director or the manager shall be French.

Art. 2.—The "compensation d'armement" is granted to every sea-going steamer of foreign build equipped and sailing under the French flag and gaging over 100 tons gross. The tariff is fixed as follows:—

5 c.	per day	and per	ton	up to	2000 tons.
4 c.	„	„	„	„	3000 „
3 c.	„	„	„	„	4000 „
2 c.	„	„	„	over	4000 tons.

Over 7000 tons, the premiums shall be the same as for 7000. They shall not be paid for more than 300 days in the year.

[1] In time of war, every seaman of the merchant navy must serve if called upon, and any ship may be requisitioned.

[2] The "compensation d'armement" is paid as a return for the training and naval education which the sailors receive, and which renders them more useful in time of war than mere recruits would be. It is paid per day and according to tonnage.

[3] The "prime à la navigation" is meant to encourage shipping enterprises. It is paid according to the miles run.

Art. 3.—The "prime de navigation" shall be paid to every sea-going vessel built in France and gaging over 100 tons.

Art. 5.—Ships intended for international coasting trade shall only receive two-thirds of the premium.

Art. 6.—Steamships built in France can only receive one of these bounties, at the choice of the owner. The following ships receive no premium whatever: foreign vessels which have passed under the French flag after the completion of their seventh year; fishing vessels and pleasure boats; ships making a trip of less than 120 miles (between a French and a foreign port); steamers doing less than ten knots an hour with half-load; ships which were mortgaged for half their value at the moment of their francisation or within the next six months.

Art. 10.—This Law shall be in force for ten years.

Art. 15.—If certain very important repairs are done abroad, the ship loses its French nationality.

The object of this Law has not been fulfilled. Only 150,000,000 francs were granted for the payment of the bounties, whereas 238,000,000 francs were needed. This deficit of 88,000,000 francs has rendered the Law worse than useless. An extra-Parliamentary Committee has been named to investigate the matter, and M. Millerand (who was Minister of Commerce under the Waldeck-Rousseau Ministry) has been elected as Chairman. M. Millerand states that if this Law were maintained, the French merchant navy would lose about 320,000 tons of shipping within the next ten years. An entire re-casting of this Law is expected before April, 1904.

Companies.—The July 11th, 1902, Act adds to and completes Art. 34 of the Code of Commerce and Art. 3 of the great Act of 1867 on companies. Art. 34 of the Code of Commerce was worded as follows: "The capital of an anonymous company is divided into shares and fractions of shares of an equal value." This seemed to exclude the possibility of creating preference shares, which were, in fact, almost unknown in France until quite recently. No text mentioned them at all before this new Law, which amends Art. 34 as follows: "The capital of an anonymous company shall be divided into shares and fractions of shares of an *equal nominal value* unless provided otherwise by the memorandum and articles of association. The company may issue preference shares whose holders shall be called to participate in the profits and to a division of assets before the other shareholders."

Several flaws were found in this Law, the chief one being the omission of any mention concerning existent companies. An Act passed on November 17th, 1903, makes the necessary corrections. Its Art. 2 says: "The present Law is applicable to companies formed before or after the passing of this Act."

4. GERMANY.

[*Contributed by* Ernest J. Schuster, Esq., LL.D.]

Law of Masters and Seamen.—This is one of the subjects as to which British legislation is much simpler and of easier access than the corresponding continental law. The provisions which in the second part of the British Merchant Shipping Act, 1894, are summed up under the above-mentioned heading are, as regards Germany, scattered about in the following Statutes: (1) the fourth book of the Commercial Code; (2) the Imperial Statute on the regulation of trades (Gewerbeordnung) and the rules issued thereunder; (3) the Statute relating to seamen (Seemannsordnung); (4) a number of smaller Statutes. (5) Any points left open by these enactments, in so far as they belong to the domain of private law, are determined by the Civil Code. The amendment of the law brought about by the legislation of 1902 did not effect any consolidation of their multifarious enactments, but resulted (1) in an entirely reconstructed "Seemannsordnung"; (2) in a reconstructed Statute relating to the duty of merchant vessels to carry homegoing seamen; (3) a new Statute relating to registry offices for seamen; (4) the modification of some of the provisions of the fourth book of the Commercial Code.

Most of the innovations brought about by the new "Seemannsordnung" are intended to improve the position and lessen the hardships of seamen. Each seaman forming part of the crew of a ship must henceforth receive a hiring certificate (Heuerschein) specifying the name of the ship, the capacity in which he is to be employed, the nature of the voyage or the duration of the contract, the rate of wages and the date and place at which the general agreement with the crew was executed.

The relaxations to be allowed to seamen (leave to go on shore, etc., rest on Sundays and holidays, etc.) are considerably extended; the hours of work and the payment of overtime work are regulated in a humane and liberal spirit; compensation is to be paid for any privations imposed by the necessity of reducing the rations during any part of the voyage, and the rules as to the payment of wages aim at the protection of seamen and the relatives dependent upon them against the extortions and malpractices of unscrupulous agents and intermediaries. The right of complaint in the case of the unseaworthiness of the ship or the insufficiency of the ship's stores, which was existing under the old law, is supplemented by the right to leave the ship's service and to obtain compensation in the event of the orders of the maritime authority made in compliance with such complaint not being carried out. The rules as to the medical care to be given to seamen suffering from diseases or wounds and as to their right to be carried to a German port are extended in their scope.

A peculiar distinction between German seamen and seamen of other

nationalities is drawn in the case of a dismissal by reason of a venereal disease constituting a danger to the other members of the crew. If the diseased seaman is of German nationality, he is entitled to compensation and medical care and has the right to be taken home, but if he is of any other nationality he is deprived of these rights, unless in his own country German seamen enjoy the same advantage.

The provisions relating to the relations between seamen and their employers—except as regards a few specified points—cannot be modified by contract.

From an æsthetic point of view the substitution of the popular expression "Kapitän" for the ugly and misleading word "Schiffer," which is still used in the Commercial Code, deserves hearty commendation.

The principal innovation of the Statute relating to the duty of merchant vessels to carry homegoing seamen consists in the fact that this duty, which was hitherto confined to seamen in distress, is now extended to seamen accused of criminal acts punishable according to German law (hence the substitution of "heimzuschaffender Seeleute" for "hülfsbedürftiger Seeleute" in the title of the Statute).

The Statute relating to registry offices for seamen is intended to prevent some of the abuses connected with the engagement of crews through professional agents whose power over the seamen was frequently used in a very unscrupulous way. The amended Imperial Trade Regulation Act (Gewerbeordnung) of 1900 had already taken a step in the same direction by including registries of the kind in question among the trades requiring Government permission, but the above-mentioned Statute for the first time enumerates certain grounds upon which permission must be refused. No lodging-house keeper, innkeeper, retailer of alcoholic drink, provider of seamen's outfits, money-changer, or pawnbroker is henceforth to receive the permission. The fees payable to the registries are to be fixed by Government authorities, and the account books of the owners are under public control. The permission to carry on a registry may be withdrawn if fees exceeding the prescribed scale are repeatedly charged to seamen, or if by any other course of action it is shown that the business is not carried on in a proper manner. A copy of the Statute relating to registries must be posted in a conspicuous place in every merchant vessel.

The changes in the Commercial Code relate to matters of detail consequential on the modification of the "Seemannsordnung."

Removal of the Dictatorial Powers of the Governor of Alsace-Lorraine.—The discretionary power of the Governor of Alsace-Lorraine enabling him to dispense with the usual constitutional safeguards by virtue of a section in the Act of 1871 known as the "dictature section" (Diktatur paragraph), though not exercised in practice, was a frequently ventilated grievance of the inhabitants of Alsace-Lorraine which has now been removed by Imperial Statute.

Excise Duty on Sparkling Wines.—The consumers of German sparkling wines feel very sad under the excise duty of sixpence on each bottle introduced by the Statute of 1902, and the humbler persons who drink cider and other sparkling fruit wine are no less aggrieved by the penny which the same enactment imposes on each bottle produced for their use.

The Federal Council have power to order a compensation to be paid in respect of sparkling wines produced from imported raw wine, and exported to foreign countries, such compensation to be an equivalent of the import duty paid in respect of the raw wine.

Use of the "Red Cross" as a Trade Mark.—The frequent use of the "Red Cross" for trade purposes has caused a Statute to be passed prohibiting such use for any purposes other than those of the army medical service except in cases in which special permission is obtained from the competent Government authority.

Local Jurisdiction as to Prosecutions for Libel.—A German prosecution for libel is (as the case may be) instituted either in a Petty Sessions Court (Schöffengericht—being a Court attached to one of the Local Courts—Amtsgerichte—of which the total number is 1933), or in one of the Provincial Courts (Landgerichte—of which the total number is 173). The former rule of law, under which every Court (competent as regards the subject matter) in the district of which the libel was *published* had local jurisdiction, was particularly trying to the better known newspapers, which are sent to subscribers in all parts of Germany, and therefore published in a very large number of places. An Imperial Statute passed in 1902 provides that henceforth the Court in the district of which the newspaper is *issued* is to have *exclusive* jurisdiction except in the case of a private prosecution for defamation, in which case the prosecution may take place in the district in which the prosecutor is domiciled or habitually resident, being also the district in which the libellous matter was published.

Tariff Statute.—Whenever the commercial treaties regulating the fiscal arrangements of the German Empire are approaching the period of their determination, a new "revolver" has to be prepared, intended to facilitate the conclusion of new treaties. This is the so-called "autonomous tariff" which, in the absence of special arrangements with the country from which the particular goods are imported, determines the rate of duty. The difficulties connected with the preparation of the tariff have so far increased on each occasion when a revision became necessary, and the passing of the tariff of 1902 would have been impossible if the Federal Government had not applied several drastic remedies against the threatened obstruction. The Select Committee which, according to the usual custom, was entrusted with the discussion of the details of the bill submitted by the Federal Council made such slow progress that it became necessary for them to continue their deliberations during the Parliamentary recess, and in order to compensate them for their continued absence from home a Statute had to be

passed allowing the sum of two thousand marks to each member of the Committee present at its deliberations during the suspension of the plenary sittings.

The report of the Committee did not satisfy the friends of agricultural protection nor the enemies of any protection, but a compromise was made with the first-named opponents, and the opposition of the others was rendered innocuous by a change in the procedure of the Reichstag, which allowed the bill to be passed *en bloc* without any discussion of the individual items—a change which was carried among scenes of great tumult, and which is still much resented by large numbers of the German population. One of the distinctive features of the new tariff is the introduction of minimum duties in the case of rye, wheat, barley used for malting, and oats. The margin for negotiation in respect of these articles is the difference between the minimum duties and the maximum duties prescribed by the tariff, and no concession made by the foreign country in respect of import duties can enable the negotiators to reduce the minimum. The negotiations with Russia, which so far are the only ones which have been opened, have been considerably hampered by this impediment, and it is still doubtful whether they will lead to any result.

5. ITALY.

[*Contributed by* T. C. Giannini, Esq., *Professor of Commercial Law at the University of Ferrara.*]

1. Social Legislation.

Bureau of Labour and Council of Commerce.—Italy has now followed other countries in instituting (by the Law of June 29th, 1902) an Office of Labour in dependence on the Minister for Commerce. Its function is to collect and publish information concerning labour within the kingdom and abroad—especially in the lands whither emigration is principally directed—the state of wages, the condition of labourers, strikes, casualties, and the comparative conditions of labourers at home and abroad. It has also to follow and make known the social legislation of foreign countries and to prepare such reforms as are needed in the legislation for labour in Italy (Art. 1). There has also been instituted, in connection with the office of the same Minister, an Upper Council of Commerce, consisting of forty-three members elected by the Senate, by the Chamber of Deputies, by the Chambers of Commerce, and by other federations of the State. This Council examines questions that may arise between masters and men, proposes the investigation to be made by the Office of Labour, and suggests measures for bettering the conditions of the workmen (Arts. 2 and 4).

The Law enacts (January 29th, 1903) that the Office shall issue a publication setting forth the conditions of labour and labour legislation both in Italy and abroad (Art. 6). The Office may also enter into direct communication with the Labour Offices of other States, and with all such institutions, whether Italian or foreign, as have for their principal aim the aiding of the working-classes.

The most important laws that come under the head of "Social Legislation" are those treating of the work of women and children, of the National Life Insurance Offices for workmen, and of insurances against accidents.

Women and Children.—The Law of June 19th, 1902, on the work of women and children enacts that children shall not be admitted to work under the age of twelve. In certain kinds of labour, to be determined by the Board of Health, no male children may be admitted under the age of fifteen, and no female children under that of twenty-one; or are admitted only when special precautions are taken. No women, and no children under the age of thirteen, may be employed in quarries or mines; and in three years' time (in 1905) the minimum age for children so employed will be raised to fourteen (Arts. 1 and 4). Night-work is forbidden for boys under fifteen years, and for women under twenty-one. In five years' time (in 1907) night-work will be forbidden for women, whatever their age. By night-work is meant the work performed between 8 p.m. and 6 a.m. during the months from October 1st to March 31st, and between 9 p.m. and 5 a.m. during the remainder of the year. Women who have been confined may not be employed earlier than a month after childbirth; but if a medical certificate be produced to the effect that no deleterious effect will be produced upon their health, they may, as an exception, be employed after three weeks. Boys and girls under fifteen years of age may not be employed for more than eleven hours; women not more than twelve hours. The labour of children and women, of whatever age they may be, must be broken by one or more intervals of rest; and under no circumstances may the work last, in the case of children or of women who have not attained their majority, for more than six consecutive hours. Moreover, women of any age and children under fifteen years must have a rest of twenty-four hours in the course of every week. Employers of women or children who do not conform to this Law are liable to a fine of from 50 to 500 Italian lire, according to the number of persons thus illegally employed.

National Insurance.—The Law concerning the National Insurance Offices against the sickness and old age of workmen (July 28th, 1901) has created an autonomous corporate body residing in Rome and having as its aim the provision of a pension to such labourers as, through age or accidents, may have become unable to work.[1] The workmen will thus become accustomed

[1] A remarkable Commentary of this Law has been written by Professor Rava, now Secretary of State for the Board of Trade (Bologna, 1902).

to saving. The capital of this insurance society is formed by the contributions of those who wish to make use of it and of large endowments made by the State, and occasionally by private persons. This Insurance Office may be used only by Italian citizens employed in manual labour or working by the piece or by the day. Married women may make use of this Insurance Office without being obliged to obtain the consent of their husbands, as may minors without the authorisation of father or guardian. The use of the Office is voluntary; but the sums paid in must not be less than 6 or greater than 100 Italian lire per annum (Art. 8). The payment may be made either that the heirs may enjoy the advantages of it in case of death, or simply that the person paying may receive the annuity if he is alive at the established time; just as happens also in life insurances. The payment of the pension begins after at least twenty-five years from the paying in of the first sum, provided the person in question is sixty years of age; but this term may be voluntarily deferred to sixty-five, and is reduced to fifty-five in the case of women (Art. 12).

When the workman who joins the Insurance Office declares that the pension is to go to his heirs, he can designate as such only his children, his wife, or, if he has no children, his relations in the ascending line. The children receive three-fifths, the wife or husband two-fifths, or else the wife or husband three-fifths, and the relations in the ascending line two-fifths (Art. 14).

The Post Offices serve this institution gratuitously. The National Insurance Office is under the vigilancy of the Minister for Commerce, who must supply the annual balance-sheets and all particulars for which he may be asked (Art. 30). No undertaking or company may assume the title of *Cassa Nazionale* (Art. 32)—evidently that all confusion may be avoided.

Accidents During Work.—The Law concerning accidents during work dates from March 17th, 1878; but it was much criticised, and has been recently modified, and we may say substantially changed, by the Law of June 29th, 1903. The general principles, however, remain—viz., (1) insurance of workmen is obligatory; (2) compensation is in proportion to the wages and to the accident suffered; it consists not of a series of payments, but of a lump sum. There is here a resemblance to the English law and a dissimilarity to the laws of other countries. The principle is that of professional risk; the obligation to repair injuries undergone by the workmen shall form part of the passive capital of an undertaking.

Insurance must be effected for workmen employed in mines and quarries, in the erection or pulling down of buildings, in the making of gas or generation of electricity, in dockyards, in the manufacture of explosives; for workmen who attend to the cannon fired to prevent the fall of hail; for those working where machines or motors are used for industrial or agricultural purposes; and in general for all those employed in factories where there are more than five

workmen and where there are machines not worked directly by the workman who uses them. Insurance must further be effected when more than five workmen are engaged on the construction or working of railways, on transport of any kind, on loading and unloading, on cutting and transporting timber, on the draining of land, on the making and mending of harbours, on banks and canals, bridges, tunnels and ordinary roads, as well as on the building or the breaking up of ships.

The Law recognises as labourers such as work away from home at fixed wages or by the piece, or if they are apprentices without wages, and also such as superintend the work of the actual labourers at wages not higher than 7 Italian lire a day.

The duty of insurance lies with the head or manager of the undertaking or construction ; and this is also the case when the work is being carried out on behalf of the State. Any one who carries out one of the above-mentioned undertakings with more than five workmen must insure his workmen. The latter are exonerated from any contribution towards the expense of insurance ; and any employer who should even indirectly throw such expense upon his men, would be liable to a fine, ranging up to 4,000 Italian lire. The following are exonerated from the duty of insurance : Railway companies who are under the obligation of modifying or of not altering their Relief Funds ; the State in the case of workmen for whom, in case of accidents, provision is already made by law ; those who, having not less than five hundred workmen, have founded at their own expense a fund, which shall provide for them if disabled during work ; employers who have formed themselves into a mutual insurance association. The Government may even under certain circumstances oblige the employers in a given industry, in which at least 15,000 workmen are engaged, to unite to form a mutual insurance association.

Those who omit to fulfil their obligations of insurance are punished with a fine of 5 Italian lire for every workman and for every day, besides having to pay the workman, in case of accident, what he would have received from the Insurance Office. The employer who has insured his workmen is freed as a rule from all liability in case of accident. He is only obliged to give notice of any accident to the police within two days, under pain of a fine. If, however, the employer be condemned by the Court as the cause, through negligence, of the accident, or if one of his dependants, for whose action he is responsible, be condemned for the same cause, the employer is liable towards the injured workman, even though the latter may have received payment from the insurance society. The employer, however, is in no way liable when the sum which he should pay as an indemnity is not greater than the sum paid by the Insurance Office. If it is greater, he must pay the difference between them. But the Insurance Office can exact reimbursement from the employer through whose fault the accident occurred.

The indemnity is calculated on the following scale : if the workman has been rendered totally and perpetually incapable of work, it is equal to the

salary for six years, and is never less than 3,000 Italian lire; in the case of lifelong partial incapacity, it is six times that sum by which the wages are therefore reduced; in the case of temporary total incapacity the indemnity is daily, equal to half the wages, and lasting as long as the incapacity lasts; in the case of temporary partial incapacity, the indemnity is daily, equal to the half of the reduction of the wages; in case of death the indemnity amounts to the wages for five years. In this last case the indemnity is divided amongst the children if there are any; if not, amongst relations in the ascending line; and if there are none of these either, amongst the brothers or sisters under eighteen years of age, and incapable of work, who were supported by the dead man. The wife or husband (provided that he or she were not living apart from the one who was killed) has a right to two-fifths of the indemnity if there are also descendants, to one-half if there are relations in the ascending line, and to three-fifths if there are brothers and sisters in the above-mentioned conditions, and to the whole indemnity if there are no other claimants.

After two years from the day of the accident, the workman and the insurance societies shall have the right of demanding the revision of the indemnity, if modifications have meanwhile taken place in the workman's physical conditions.

It is hence necessary to adopt a system of wage measurement. This Law recognises as yearly wage the remuneration paid during the twelve months preceding the accident; if the workman has not finished a year's work, the yearly wage is calculated as three hundred times the daily wage.

Among the most notable modifications made by this Law of 1903, we must register the obligation of insuring all hands on any ship sailing under the Italian flag, except, however, the qualified pilot. The insurance must be effected by the proprietors, the list of the men must be furnished by the captain, and the accident must be denounced within three days of arrival in an Italian harbour or in a foreign harbour where there is an Italian Consulate. The duty of insurance does not dispense from that of the cares imposed by the Commercial Code (Arts. 537 and 539). The indemnity in case of death is equal to the wage for three years. In the case of permanent and total incapacity, it is equal to the wage for four years; in the case of permanent partial incapacity, to four times the loss on the yearly wage.

Many other criteria, as those for distinguishing between permanent and temporary incapacity, will be set forth in the *Regolamento*.

2. Law on Composition with Creditors.

Proceedings for composition before the declaration of bankruptcy can be taken in Italy only by such as are engaged in trade; for here, as in France and some other countries, proceedings for bankruptcy are only permitted to those whom the Code of Commerce recognises as traders.

Every trader, and every legally constituted company for trade, may invoke a meeting of creditors for the proposition of an arrangement previous to the declaration of bankruptcy. This may be done at any time before the declaration of bankruptcy. The petition must be presented to the tribunal of the place where the person engaged in trade has his principal seat of business (its headquarters, if a company), and must be accompanied by the books, by a statement of affairs, by a list of creditors, and by the conditions proposed to them. If the books are wanting, or if the petitioner, having been already bankrupt, failed to pay his debts or to observe the conditions agreed upon in a previous composition, or if there are reasons for the opening against him of proceedings for criminal bankruptcy, or, lastly, if he do not offer reliable security for the payment of at least 40 per cent. of his debts, then the petition shall be refused. When the tribunal grants the petition, recognises its legality, and orders a meeting of the creditors to discuss the proposals, it names a trustee who shall supervise the administration and the conduct of the debtor, and shall report upon them to the creditors. The decree is fixed upon the outer door of the tribunal and gazetted. If the publicity thus given to it should seem insufficient, the tribunal orders its insertion in the papers, and, if necessary, in foreign papers. Under the direction of the trustee, however, the debtor continues to administer his business and to perform the ordinary operations of his industry. If he is found to have fraudulently disposed by debt of his property or part thereof, the tribunal immediately declares him bankrupt. Creditors are informed by letter or telegram. All action or proceedings against the debtor are suspended after the date of the petition. The day before the meeting of the creditors, the trustee places before the tribunal his report of the debtor's condition and conduct. The creditors may be present in person at the meeting, or may appoint a representative by simply writing the name of the person who shall take their place on the letter or telegram which summons them. The debtor must appear personally and furnish all necessary explanations. The proposals must be approved by a majority in number and three-quarters in value of the creditors who have not been guaranteed by mortgage or pawn. The sums owing to a wife or husband or to near relations of the debtor are not considered. Creditors may assent to the proposals by letter or telegram.

This compromise must obtain the approval of the Court. Three days before the case comes on, the Court shall hear a report of the official receiver as to the terms of the compromise. Even if all legal conditions have been complied with, the Court may refuse its approbation to the proposals; and this when it does not consider the debtor worthy of them. The Court, when it refuses the proposals, must officially declare the debtor to be bankrupt. The sentence approving or refusing the proposals may be appealed from by any person aggrieved.

When the sentence of approval can no longer be appealed from—*i.e.*,

fifteen days after it has been posted up—the proposals become binding on all the creditors. If the debtor is a trading company which has issued bonds, the possessors of these bonds have a meeting apart. If the debtor fails to comply with the proposals, the arrangement does not fall through, but every single creditor can present a petition for his bankruptcy.

The Law on the compromise previous to the declaration of bankruptcy abrogates the Law concerning the *moratoria*.

The same Law contains under the name of "Proceedings in the Case of Small Bankruptcies" some very important clauses, which put into practice the fundamental conception of bankruptcy embodied in English legislation—*i.e.*, that there can be no real and proper proceedings for bankruptcy if the debts be not in excess of a certain fixed sum.

If the trader ceases to pay, but his debts are not, taken all together, greater than 5,000 Italian lire, liquidation is effected in a meeting held before the *pretore*, a trustee, named by the Court, being present as in the proceedings for the compromise previous to the declaration of bankruptcy. If the creditors accept the debtor's proposals, the agreement may at once be enforced; otherwise the trustee, or some person delegated by the majority of the creditors, proceeds to the declaration and distribution of the dividends.

These proceedings aim especially at hastening matters and at reducing, as far as possible, the legal costs which often absorbed a large part of the creditors' wealth.

6. SWEDEN.

[*Contributed by* Nils Setterwall, Esq., *Legal Adviser to the British Embassy at Stockholm.*]

The legislation of Sweden for 1902 is of no interest, being confined to amendments of minor details of Statutes in force as well as to creating administrative Ordinances.

7. UNITED STATES OF AMERICA: STATE LEGISLATION.

[*Contributed by* R. Newton Crane, Esq.]

The number of new laws enacted by the Legislatures of the several States in 1902 is very small as compared with the great volume of legislation in 1901; numerically stated, the proportion is 5,590 to 14,190. This diminution in the output of the legislative machinery is primarily due to the fact that in no less than forty-one of the forty-eight States and Territories the Legislatures meet only every other year, and of the forty-one States in which the legislative body meets biennially, thirty have their session of the Legislature in the years

ending with an odd number. The arguments in favour of meeting in an odd rather than an even year are not apparent, but they must have some persuasive influence, as within the past year Iowa has adopted a constitutional amendment authorising the Legislature to sit in the odd instead of the even year, while in Alabama, where the Legislature meets only once in four years, the people by a popular vote have changed the time of meeting from the even to the odd year. The tendency to abandon annual sessions of the law-making power for biennial session is growing, and with the predilection in favour of meeting in the odd years it is not improbable that the American people are endeavouring to attain to a system which will give them absolute immunity from legislation, at least every other year.

Of the 5,590 new laws and amendments of old laws passed last year, many were of a local and private nature; those of a public character amounted to only 1,773.

Constitutional Changes.—Nearly every State is obliged by popular clamour to amend its organic law at frequent intervals, and from time to time adopt an entirely new constitution. The latter can only be done by a convention composed of representative members elected especially for the purpose. Constitutional conventions were held during the year 1902 in Connecticut, New Hampshire, and Virginia.

The chief object of the Connecticut Convention was to draft a constitution which would abolish the irregularity of representation growing out of the system of town meetings and other municipal prerogatives of old colonial days, by which certain localities were given an undue proportion of representatives in the Legislature. The Convention, however, appears to have done its work so unsatisfactorily to both of the political parties that the proposed constitution was rejected when submitted to the popular vote of the electors.

The Virginia Constitutional Convention, after being in session for over a year, adopted a constitution which did not need to be submitted to the people for ratification, but went into effect by operation of law on July 10th, 1902. It makes no radical alteration of the former organic law of the State, except perhaps in the conditions under which the right of suffrage may be exercised, to which reference will be made later on, and in certain private and public corporation laws. To meet the demand that the State shall share in the gains of street railway, gas, electric light, and other companies for public service, it is provided that franchises for such purposes shall be limited to thirty years, and must be sold at public auction. They may contain a provision for public purchase at the expiration of the franchise. The sale to the highest bidder of privileges of this nature will doubtless not only prevent the acquiring of valuable rights by monopolists, but will remove one of the most frequent causes of bribery and corruption in American municipal life.

The New Hampshire Constitutional Convention did not meet until

December, 1902, and had not therefore completed its labours by the end of the year.

The Executive Branch of the Government.—In the original State constitutions, those first adopted by the thirteen States which succeeded the colonial Government, the power to veto laws passed by the Legislature was given to their executives by only three States—viz., Massachusetts, New York, and North Carolina, and in New York the Governor was obliged to share this privilege with his council. The veto is now the prerogative of the Governors of all the States except three—viz., North Carolina, Ohio, and Rhode Island. In Ohio an amendment to the constitution to clothe the executive of that State with this authority was to have been submitted to the people in 1903. The new constitution of Virginia follows the example set by other States which have recently altered their laws and increased the authority of the Governor in this respect, by providing that he may veto separate items in a money bill. Heretofore he was compelled to either veto the whole bill or give it his approval as a whole, thereby compelling him to pass, in some cases, objectionable appropriations in order to secure the adoption of necessary accounts.

There is a notable tendency to increase the salaries of Governors of States. Iowa and Mississippi have followed the example of North Carolina and Utah in 1901, in raising the compensation of their chief executives. The salaries of all Governors of American States would, however, appear to citizens of other countries to be very small, particularly as there are no additional grants or allowances for entertaining, or the up-keep of the executive residence beyond the most necessary incidental expenses. Of the forty-five States, seventeen pay their Governors $3,000 or less; eleven pay more than $3,000 and less than $5,000. In only eight States does the Governor receive more than $5,000, while in five States the amount of compensation is $2,000 or less.

Indifference of Electors.—In a number of instances recently it has occurred that new constitutions and constitutional amendments have failed of ratification where the law required that they should receive for this purpose a certain proportion of votes. Candidates for election, intent upon securing their own return, were apparently indifferent to the fate of public measures in which they were not selfishly concerned. In Minnesota, for example, at the last election for Governor, 271,382 votes were cast. At the same time 124,584 ballots were deposited for, and only 21,251 against, certain important constitutional amendments. Notwithstanding this very large majority, the amendments failed of ratification because they did not have a majority of all the votes cast at the election. In order to overcome this difficulty, which is due solely to the apathy of the electors upon all questions save those of partisan politics, Ohio and Nebraska have ingeniously enacted laws which provide that, if the State Convention of a political party declares for or against a proposed constitutional amendment, such declara-

tion shall be considered a portion of the party ticket. A vote for such party ticket will then be counted as a vote for or against the amendment. As such amendments are rarely of a partisan character, the probability is they that will be adopted by both of the political parties, and will therefore receive a practically unanimous vote.

Qualification of Voters.—The constitutional convention of Virginia spent considerable time on the question which has agitated the Southern States for several years past—viz., how to enact a law which, while general in its terms and apparently fair and just to all voters, would operate, or could be made to operate, so as to disfranchise the negroes. The most ingenious device to secure this end is that which has been incorporated into the constitution of Louisiana, and which is known as the "grandfather clause," and which in effect purported to enact that only those should be entitled to register whose fathers or grandfathers would have been entitled to vote in the year 1869 which was prior to the adoption of the XVth amendment to the Federal Constitution providing that negroes should not be excluded from the franchise. The new constitution of Virginia provides that no one may vote who has not paid his poll taxes for three years before the election, and who cannot prepare and deposit his ballot without aid. The Legislature may also prescribe a property qualification.

Enlarging the Faculties of Electors.—The Governors of two States, New Jersey and Virginia, in their annual messages recommended that steps be taken to secure the election of United States Senators by a direct vote of the people, instead of, as at present, by the vote of the joint Houses of the Legislature. In twelve States a resolution was passed in 1901 petitioning Congress to call a convention to propose an amendment to the Federal constitution to secure this result. In Virginia the election of Treasurer, Secretary of State, and Superintendent of Public Instruction has been transferred from the Legislature to the people. In West Virginia the Secretary of State is henceforth to be chosen by popular suffrage.

Uniform Legislation.—Iowa, New Jersey, and Ohio have adopted the uniform negotiable instruments law, prepared by Mr. Crawford, of the New York Bar, under the supervision of the Commercial Law Committee of the United States Uniform Laws Commission, reference to whose work was recently made in this journal.[1]

Direct Legislation.—Oregon, by a vote of 62,024 to 5,668, has adopted the initiative and referendum amendment to the constitution. It applies to State legislation only and provides for the initiative on the petition of 8 per cent., and the referendum on the petition of 5 per cent. of the electors.

Crimes and Offences.—The assassination of the late President McKinley was the occasion of the passage by four States—Iowa, New York, New Jersey, and Ohio—of laws dealing with crimes against Government. In Iowa it is made a felony to encourage or incite unlawful killing of any

[1] *Journal of the Society of Comparative Legislation*, No. 10, p. 111.

person within or without the State. The New Jersey law declares that any person who in public or private advocates the subversion or destruction of Government by force is guilty of a high misdemeanour, punishable by a fine not exceeding $2,000 or hard labour for fifteen years. Membership in organisations formed to encourage hostility to any Government, and the circulation of books for this purpose, are punishable in the same way. Assualts on the President or Vice-President of the United States, or Governor of any State, or the heir apparent or presumptive to the throne of any foreign State, with intent to kill, shall be punished by death. In New York the advocacy of criminal anarchy, which is defined as the doctrine that organised government shall be overthrown by force or violence, is a felony. Editors are made liable for the publication of anarchist sentiment, as also are persons participating in assemblages of anarchists, the penalty being $5,000 fine or ten years' imprisonment, or both. The person who permits a building or room to be used for such assemblages is likewise guilty of a misdemeanour, punishable by a fine of $2,000 or two years' hard labour, or both. In Ohio life imprisonment is made mandatory upon conviction of an attempt to take the life of the President, Vice-President, or a member of his Cabinet, or of any Governor or Lieutenant-Governor of any State.

Death Duties as a means of broadening the basis of taxation do not seem to find much favour in the United States. The Federal law passed to secure an additional income during the Spanish-American War has been repealed. The Wisconsin Act of 1889 was declared unconstitutional because exemption from taxation was based on the size of the whole estate, instead of on that of the separate legacies or shares. The Court held that no rational distinction could be drawn between two legatees simply because the estates from which their legacies came were of different amount. The New York Act of 1899, taxing remainders and reversions vested before the enactment of the original law of 1885, but not yet in possession, was also declared unconstitutional. In Minnesota the exemption has been increased to $10,000, and the rate for collateral heirs to 10 per cent. The tax when property descends to direct heirs has been reduced to ½ per cent. In most States the tax applies only to collateral heirs or strangers.

Temperance Legislation.—There has been new legislation affecting the drink question in twelve States, but none of notable importance, except in Vermont, where after half a century of prohibition a licence law has been passed. The old prohibition law was effectively administered, yet reports showed a steady increase in the consumption of intoxicants, while in the cities and large villages the vice of drunkenness exhibited no abatement, but rather an increase. The new licence taxes range from $1,000 for a public-house to $10 for a chemist, who may sell for medical purposes only. The new legislation on this subject in all the States shows the same trend, and is in favour of temperance as distinguished from prohibition.

Labour Legislation.—Maryland has advanced the age at which employment in factories may begin from twelve to fourteen years, and has prohibited the employment of children under sixteen in the manufacture or sale of intoxicants. Kentucky has made unlawful the employment of children under fourteen in factories, workshops, or mines, unless with the consent of the county judge. Ohio has raised the prohibition age in children's employment from thirteen to fourteen. Massachusetts obliges all illiterate minors employed after the legal age to attend night school, and requires such minors to furnish their employer with a certificate of attendance at such schools.

California has adopted a constitutional amendment making eight hours a maximum day's work for adults in public employment. The New York Legislature passed a resolution to submit to the people a constitutional amendment empowering the Legislature to regulate the hours, wages, and other conditions of labour on public work. Rhode Island and Louisiana have both prescribed ten hours' labour, within twelve consecutive hours, as the maximum day's work of street railway employees.

Employers' Liability.—Virginia has made railway companies liable for injury caused by the negligence of an agent or officer of the company superior to the employee injured, and for the neglect of a co-employee in another department of labour, or another train, or in charge of points, signals, or engines, or charged with transmitting messages. Knowledge of defective machinery is not itself a bar to recovery, and contracts to waive right of action for injuries are void. Ohio has passed a law making all employers liable for injuries to employees caused by the negligence of any employee entrusted with the duty of inspecting and repairing machinery and appliances. In New York the new Act modifies the fellow-servant doctrine by making the employer liable for injuries resulting from the negligence of any person entrusted with superintendence, and further provides that the fact that an employee continues in the service of an employer after the discovery of the dangers therein is not, as a matter of law, to be considered as a waiver by him of the risk. In Maryland an Act has been passed entitled "The Employers' and Employees' Co-operative Insurance and Liability Act." It abolishes the doctrines of common employment and contributory negligence on steam and street railways, quarrying, mining, and public works. Employers, however, are permitted to relieve themselves of the additional liability by paying into a fund held by the State Insurance Commissioner an annual sum, proportioned to the number of their employees, one-half of which sum may be deducted, by agreement, from the wages of such employees. From the fund, in case of death, the family of the deceased workman receive $1,000.

Trade Unionism.—The Massachusetts law has been amended so that it now requires, instead of permits, the State Board to endeavour to obtain a settlement of controversies between employers and employees, or secure their submission to the arbitration of local or State Boards.

Motor-Cars.—A number of States have begun to legislate on matters connected with automobiles. Most of the new laws confine their provisions to regulating the speed, which, generally speaking is fixed at a much lower rate than in Great Britain, the average maximum not reaching twenty miles an hour. The Ohio law is novel in that it requires bicyclists, automobilists, and equestrians, on meeting vehicles, to leave two-thirds of the road free for the latter.

BRITISH EMPIRE.

I. UNITED KINGDOM.[1]

[*Contributed by* J. M. Lely, Esq.]

Acts passed in 1902—Public General, 42; Local 261.

Out of about three hundred public bills submitted to Parliament during the long Session which closed just before Christmas, 1902, forty-two were placed on the Statute-book, comprising a Cremation Act, a Judicature Act, a Midwives Act, a Patents Act, a Shop Clubs Act, the Metropolis Water Act, and the important Licensing and Education Acts, the work of the Session being thus reviewed by His Majesty the King in his Royal Speech to Parliament on the prorogation of it:—

"During a Session of unusual length you have passed measures dealing with the supply of water to the Metropolis, with the Sale of Intoxicating Liquors, and the Registration of Clubs, and with a much-needed reform of the Patent Laws. These subjects have long called for legislative treatment, and I rejoice that time has been found to pass the necessary Acts. The heaviest portion, however, of your labours has been devoted to the Bill for the co-ordination and improvement of Primary, Secondary, and Higher Education in England and Wales. It was impossible, in the public interest, to defer any longer dealing with this great subject; nor could it be touched without raising issues which all would desire to see left outside the region of political discussion. I trust that the controversies which have been aroused during the passing of the measure will not be of long duration, and that it will greatly contribute to the solution of what is perhaps the most difficult, and is certainly not the least important, of all the questions of domestic legislation which can engage your attention."

Subjoined is an outline of the principal public Acts passed, the letters B.E., U.K., E., S., and I. signifying application to the British Empire, the United Kingdom of Great Britain and Ireland, England (including Wales by virtue of the Wales and Berwick Act, 1746) Scotland, and Ireland respectively.

[1] This article is mainly a reproduction of the summary prefixed to the 1902 continuation of *Chitty's Statutes of Practical Utility.*

Acts Continued.—The Expiring Laws Continuance Act (No. 32, U.K.) which gave rise to an important debate during its passage though the House of Commons, again continued for one year more—that is, until December 31st, 1903—such important Statutes as the Poor Rate Exemption Act, 1840; the Militia (Ballot Suspension) Act, 1865; the Ballot Act, 1872; and the Employers' Liability Act, 1880. The continued Acts numbered in all 91, of which 35 were principal, and the remainder are amending Acts, the earliest of these being the Linen Manufactures (Ireland) Act of 1835, and the latest the Local Government Act, 1896.

Birds.—Lord Jersey's Wild Birds Act (No. 6, U.K.) empowers a Court of Summary Jurisdiction, on conviction of any offence against the Wild Birds' Protection Acts, to order the bird or egg in respect of which the offence was committed "to be forfeited or disposed of as the Court shall think fit."

British Museum.—The British Museum Act (No. 12, E.) empowers the Trustees of the Museum to remove to a new building at Hendon and store there "newspapers and other printed matter rarely required for public use," the Trustees being bound to make arrangements to the satisfaction of the Treasury for making the matter available for use at the present Museum, "when required, on due notice being given." Five acres of land have been already acquired for the purposes of the Act, and the new building was expected to be ready before the close of 1903.

Cremation.—Lord Monkswell's Cremation Act (No. 8, E.S.), which is purely permissive, and did not come into force till April 1st last, enables burial authorities, all of which are either directly or indirectly elective, to establish under the designation of "crematoria" "buildings fitted with appliances for the purpose of burning human remains," under the supervision of the Local Government Board and the Home Office. No crematorium is to be constructed nearer to any dwelling-house than two hundred yards except with the consent of the owner, lessee, and occupier, nor within fifty yards of a highway nor in the consecrated part of the burial ground of any burial authority. The Home Office is directed to make regulations, to be submitted to Parliament, "prescribing in what cases and under what conditions the burning of any human remains may take place," and a set of important regulations has been made and published. Severe penalties are imposed for the breach of the regulations, and to procure cremation for any criminal purpose is made punishable by penal servitude. Incumbents are freed from any obligation to perform a funeral service in the case of a cremated parishioner, but on their declining to do so "any clerk in Holy Orders of the Established Church, not being prohibited under ecclesiastical censure, may with the permission of the Bishop and at the request of the executor of the deceased person or of the burial authority or other person having charge of the cremation," perform such service.

Education.—The Education Act, 1901 (Renewal) Act, 1902 (No. 19,

E.), continued until July 31st, 1903, the powers of a school board held illegal by the Court of Appeal in *Reg.* v. *Cockerton* (1901), 1 K.B. 726; 70 L.J. K.B. 421, but legalised (on certain consents of local authorities being obtained) by the Act of 1901, to maintain certain evening schools.

The Education Act (No. 42, E.) (which came into operation on March 26th, 1903, "or such other day, not being more than eighteen months later, as the Board of Education might appoint [1]) constitutes entirely new "local education authorities" charged with the duties (1) of promoting "the general co-ordination of all forms of education"; (2) of supplying education other than elementary; and (3) of supervising elementary education within their respective areas. These authorities are, in connection with co-ordination and with education other than elementary, the county and county borough councils, and in connection with elementary education, the county councils, the county borough councils, the councils of boroughs with a population of over 10,000, and the councils of urban districts with a population of over 20,000.

Co-ordination.—Co-ordination, which is nowhere defined in the Act and only twice mentioned, is believed to mean the regulation of all forms of education with reference to each other and with the view of facilitating the transfer of scholars from elementary to non-elementary schools. It is enacted by s. 17 (6) of the Act that before approving a scheme for the constitution of any of the education committees which are to work the Act under schemes made by the councils and approved by the Board of Education—

> The Board of Education shall take such measures as may appear expedient for the purpose of giving publicity to the provisions of the proposed scheme, and before approving any scheme which provides for the appointment of more than one education committee, shall satisfy themselves that due regard is paid to the importance of the general co-ordination of all forms of education.

Education other than Elementary.—The county and county borough councils are directed to consider the education needs of their area and to take steps "to supply or aid the supply of education other than elementary." The expenses of this are to be defrayed in the first instance out of the county share (commonly called the "whisky money") of local taxation, and secondly out of a rate of twopence in the pound, "or such higher rate as the county council with the consent of the Local Government Board may fix," and it is added that non-county borough and urban district councils may also, up to a penny in the pound rate, spend money as they think fit upon the supply of education other than elementary. The schools thus formed or aided are to be strictly undenominational, and the Technical Instruction Acts, which covered much of the same ground as that now covered by Part II. of the Act, are repealed as superseded.

[1] In the majority of cases the Act came into operation in April last, as suggested by a Board of Education Circular of March 4th.

Elementary Education.—Part III. of the Act, which deals with elementary education, and was originally intended to be "adoptive" only, effects changes of the utmost importance. The rate-supported schools boards which were elected *ad hoc* by a cumulative vote, and which since Mr. Forster's Elementary Education Act of 1870 have been gradually increasing to the detriment of the voluntary schools (still numbering about 14,000, as against about 6,000 board schools), are superseded by the new local education authorities; and the voluntary schools are placed under the control of the same authorities, who become responsible for all secular instruction provided in such schools, and, with exceptions to be presently noticed, bear all the expense of maintaining them. These authorities are the county councils, the county borough councils, the borough councils in boroughs with a population of over 10,000, and the urban district councils in urban districts with a population of over 20,000. All of these councils will supervise elementary education within their respective areas, and the county and county borough councils will supervise both elementary education and education which is not elementary, through "education committees," to which all matters relating to the exercise of their powers, except that of rating or borrowing, are to stand referred.

Education Committees.—S. 17 (1) enacts that—

> Any council having powers under this Act shall establish an education committee or committees, constituted in accordance with a scheme made by the council and approved by the Board of Education: Provided that if a council having powers under Part II. only of this Act determine that an education committee is unnecessary in their case it shall not be obligatory on them to appoint such a committee.

Each committee must contain:—

At least a majority of members appointed by the council on its own selection out of its own members, "unless, in the case of a county, the council shall otherwise determine";

Some experts in education;

At least one woman;

and may if desirable contain members of school boards existing at the time of the passing of the Act as members of the first committee.

If a scheme had not been made and approved before December 18th, 1903, the Board of Education was empowed to accomplish its purpose by provisional order and bill confirming such order.

Supervision of Schools.—The education committees thus constituted supervise all the public elementary schools within their areas, the schools themselves being conducted by managers, who will not exceed six in number for each school. Where the school was a board school before the Act, or is newly provided by the local education authority, and the county council is the local education authority, the council is to appoint not more than four managers,

and the "minor local authority"—*i.e.*, "the council of any borough or urban district, or the parish council or parish meeting of a parish which appears to the county council to be served by the school"—is to appoint not more than two, and where the local authority are the council of a borough or urban district, they may appoint for a school provided by them "as many managers as they may determine." In the case of voluntary schools there will be at least a theoretical retirement of all the existing managers—who in many cases exceed in number the maximum of six—and there will be not more than four "foundation managers" appointed under the trust deed regulating each school, or if there be no trust deed or an insufficient one, in accordance with an order—to suit each case—to be made by the Board of Education on the application of the trustees, owners, or managers, and two official managers. If the local education authority be a county council, one of these official managers is appointed by that council, and the other by the "minor local authority"—*i.e.*, by the council of the borough, urban district, or parish which appears to the county council to be served by the school. Both kinds of schools—the voluntary and the former board school—will be controlled and maintained out of the rates by the local education authority, with the assistance in each case of a "Parliamentary aid grant" dependent upon efficiency, but with the important exception by s. 11 (*d*) of the Act in the case of the voluntary schools that—

> The managers of the school shall provide the school house free of any charge, except for the teacher's dwelling-house (if any), to the local education authority for use as a public elementary school, and shall, out of funds provided by them, keep the school house in good repair, and make such alterations and improvements in the buildings as may be reasonably required by the local education authority: Provided that such damage as the local authority consider to be due to fair wear and tear in the use of any room in the school house for the purpose of a public elementary school shall be made good by the local education authority.

Religious Instruction.—The Act, though in s. 4 it deals with religious instruction in schools within Part II. where education other than elementary is conducted, is silent as to religious instruction in elementary schools provided by the local education authority, but deals in a special manner with religious instruction in schools not so provided by s. 7 (6)—the "Kenyon-Slaney clause" as amended by the House of Lords—which is as follows:—

> Religious instruction given in a public elementary school not provided by the local education authority shall, as regards its character, be in accordance with the provisions (if any) of the trust deed relating thereto, and shall be under the control of the managers: Provided that nothing in this sub-section shall affect any provision in a trust deed for reference to the Bishop or superior or other denominational authority so far as such provision gives to the Bishop or authority

the power of deciding whether the character of the religious instruction is or is not in accordance with the provisions of the trust deed.[1]

It may be safely said that no Act of modern date has more needed careful study on the part of those who will be charged with its administration, the chief reason being that it is simply a single short and complicated Act following upon a history which, as it is put by the late Sir Joshua Fitch[2]—

> is unique so far as public provision for the education of the people is concerned. That provision is not the product of any theory or plan formulated beforehand by statesmen or philosophers. It has come into existence through a long course of experiments, traditions, failures, and religious controversies. What has been done in this department of public policy is the resultant of many divers forces and of slow evolution and growth, rather than of clear purpose and well-defined national aims. It has been effected in different degrees by philanthropy, by private enterprise, by religious zeal, by ancient universities and endowed foundations, by municipal and local effort, and only to a small extent by legislation. The genius, or rather the characteristic mental habit of the English people, is averse from philosophical system, and is disposed to regard education not as a science, but as a body of practical expedients to be discovered empirically and amended from time to time as occasion may require.

Immorality.—The Immoral Traffic (Scotland) Act, 1902 (No. 11, S.), makes further provision for the punishment of persons trading in prostitution in Scotland by enacting that any man living on the earnings of prostitution or soliciting for immoral purposes in any public place is to be liable on conviction before a Court of Summary Jurisdiction for any term not exceeding three months with hard labour—in this and other points following the English Vagrancy Act, 1898—which, however, does not apply to Ireland—and by its condemnation of the offender, not to imprisonment *eo nomine*, but to the status of a "rogue and vagabond," might possibly eventuate in his sentence as an "incorrigible rogue" to a public whipping. The men at whom the Act of 1898 was aimed were keenly alive to its provisions, some of them quickly departing with their companions *for Scotland*, and at least thirty migrating to Australia and the Cape.[3]

Intoxicating Liquors.—The Licensing Act, 1902 (No. 28, E), greatly amends the law of (1) drunkenness, (2) licensing, and (3) clubs. Any person found drunk and incapable in a public place may be apprehended, whereas before the Act such a person could be apprehended only in case of disorderly or dangerous drunkenness. There are elaborate

[1] In connection with this and the curiously negative Cower-Temple clause (s. 14 [2] of the Act of 1870), reference may well be made to Mr. Sadler's special Report to the Board of Education on "Moral Education in American Schools" (1902, vol. x., No. 2, by Mr. H. Thistleton Mark).

[2] In article "Education," vol. xxvii. of the new volumes of the *Encyclopædia Britannica* (1902); and see an article by the same writer under the same title in *Chambers' Encyclopædia* (1888).

[3] See *Times* of October 12th, 1898.

provisions for the separation of habitually drunken spouses by justices of the peace, the Summary Jurisdiction (Married Women) Act, 1895, being made applicable, and for the cutting off the supply of liquor to habitual drunkards. "Black lists" of such persons are to be formed by sending notices of their convictions to persons holding licences in their districts, and fining the licensed person who allows any person on such a list to be served with liquor. It has, however, been unfortunately, unexpectedly, though no doubt correctly, decided by the High Court—in *Metropolitan Police Commissioner* v. *Donovan* [1903], 1 K.B. 895; 72 K.B. 545; 88 L.T. 555; 67 J.P. 147—that a person cannot be put on a black list by a Court of Summary Jurisdiction without his consent, and until amending legislation has cured this defect, one of the most salutary provisions of the Act will remain a dead letter. Any person convicted of drunkenness may be required to enter into a recognisance with or without sureties for good behaviour, and by s. 4 of the Act (which is perhaps the most important of all under its first part), the ordinary burden of proof is shifted from the prosecution to the defence by the enactment that—

> Where a licensed person is charged with permitting drunkenness on his premises and it is proved that any person was drunk on his premises, it shall lie on the licensed person to prove that he and the persons employed by him took all reasonable steps for preventing drunkenness on the premises.

As to licensing law, the record of convictions on licences is done away with, the control of justices over the structure of licensed premises and occasional licences is greatly extended, and the requirement of confirmation of the grant of new licences, formerly applicable only to licences for the sale of liquor to be drunk on the premises, becomes applicable also to sale for consumption off the premises of the licensed person. Notices of intended applications for temporary transfers will have to be given to the police, and on the hearing of applications for permanent transfers "the agreement or other assurance, if any, under which the licence is to be transferred," must be produced to the licensing justices. It is also provided that the general annual licensing meetings, or Brewster Sessions as they are commonly called, which have hitherto been held between August 20th and September 14th (except in Middlesex and Surrey, where they have been held in March), and were not held at all in 1902, shall be uniformly held within the first fourteen days in February in each year; that being interested in a railway company is not to disqualify a justice from acting under the Licensing Acts; that no clerk of licensing justices may conduct licensing proceedings in the district for which he is clerk (though he may prepare forms), under a penalty of £100 or less; and that the appeal costs of a licensing justice whose decision is appealed against are to be paid out of county or borough funds.

The third part of the Act is concerned with the registration of clubs. Every club of any description "which occupies a house or part of a house,

or other premises which are habitually used for the pursoses of a club, and in which any intoxicating liquor is supplied to members or their guests," must be registered through its secretary by the clerk to the justices of the petty sessional division within which it is situate, the secretary being bound to furnish particulars as to mode of election, terms of subscription, closing hours, and other matters to the justices' clerk in January, 1903, and every succeeding January. The supply of liquor in an unregistered club is punishable by fine or imprisonment, or both, and the supply for consumption off the premises, except to a member on the premises, by fine up to £50.

A club may be struck off the register by a Court of Summary Jurisdiction on all or any of eight grounds, including the grounds of frequent drunkenness on the club premises, of habitual admission merely for drinking purposes, or "without an interval of at least forty-eight hours between nomination and admission"; and also including the ground "that the supply of intoxicating liquor to the club is not under the control of the members or the committee appointed by the members." Search warrants may be granted by a justice of the peace if satisfied that there is reasonable ground for supposing a registered club to be so managed as to constitute a ground for striking it off the register.

The Licensing (Ireland) Act (No. 18, I.) directs that, until after 1907, no licence shall be granted for the sale of intoxicating liquors, whether for consumption on or off the premises, except (1) by way of renewal, (2) for an hotel, or (3) for a railway refreshment-room.

Judicature.—The Supreme Court of Judicature Act (No. 31, E.) authorises the Court of Appeal to sit in three divisions instead of in two, as authorised by the Judicature Acts.

London.—The Labour Bureaux (London) Act (No. 31) enables any London borough council to establish at the expense of the rates "labour bureaux" for the purpose of supplying information, either by the keeping of registers or otherwise, respecting employers who desire to engage workpeople, and workpeople who seek employment.

The Metropolis (Water) Act (No. 41) establishes a water board to take over the undertakings of the nine London water companies, with all their rights and liabilities. Fourteen members of the board are appointed by the London County Council, and others by the borough councils and various urban districts. The compensation, which may be paid in "water stock," is to be settled, in default of agreement between the board and the companies, by a Court of Arbitration, consisting of Sir Edward Fry, Sir Hugh Owen, and Sir John Wolfe Barry. The Local Government Board was directed to take steps at once to form the board, and has taken such steps accordingly, but in other respects the Act does not come into operation till the "appointed day," *i.e.*, until June 24th, 1904, or such other day, not being earlier than that day, except with the consent of the companies, as the Local Government Board may fix.

Midwives.—The Midwives Act (No. 17, E.) of Lord Cecil Manners, which was backed also by Mr. T. Egerton, Mr. Schwann, Mr. J. P. Smith, Sir J. Tuke, Sir S. Crossley, Mr. G. Wason, Mr. Tennant, and Mr. Heywood Johnstone, enacts that after April 1st, 1905, no woman may describe herself as a "midwife," and that after April 1st, 1910, no woman may "habitually and for gain attend women in childbirth otherwise than under the direction of a qualified medical practitioner," without a certificate of competence from a Central Midwives Board established by the Privy Council.

Existing midwives, however, may claim to be certified at any time within two years from April 1st, 1903.

There is also to be a supervision of midwives by county and county borough councils. The Act does not apply to registered medical practitioners.

Militia and Yeomanry.—The Militia and Yeomanry Act (No. 39, U.K.) enables the War Office to relax the training obligations of militia reservists, and applies the provisions of the Militia Acts to the Yeomanry.

Musical Copyright.—Lord Monkswell's Musical (Summary Proceedings) Copyright Act (No. 15, U.K.) empowers a Court of Summary Jurisdiction, on the application of the owner of the copyright in any musical work, to seize pirated copies of it and order them to be destroyed or delivered to the owner of the copyright; and also empowers a constable to seize hawked pirated copies without warrant on request of such owner. Shortly after the passing of the Act, the powers under it were greatly weakened by the decision of the High Court in *Francis and Others, ex parte*, to the effect that it was a necessary preliminary to its enforcement to serve a summons on the person from whom copies had been seized.

Patents.—The Patents Act (No. 34, U.K.) directs the Patents Office officials to search the registers for a period of fifty years, on any application for a patent, to discover whether the subject-matter has been patented before, and on such discovery to inform the applicant, and to consider what notice should be given to the public; and amends the law of compulsory licences, by enabling any person complaining that the reasonable requirements of the public are not satisfied by the patentee, to procure an order for a compulsory licence from the Judicial Committee of the Privy Council, the Board of Trade having previously had sole jurisdiction in the matter.

Police.—The Police Reservists Act (No. 10, E.S.) enacts that the period of service of a police reservist during the late war may, if the police authority think fit, be reckoned in the computation of approved service for the purpose of any pension or gratuity under the Police Acts.

Post Office.—The Mail Ships Act (No. 36, B.E.) alters the nature of the security to be given by the owner of a ship engaged in the postal service before a judge of the High Court in chambers.

Prisons.—The Prison Officers (Pensions) Act (No. 9, E.) limits the

superannuation annuities of prison officers to the civil service scale, thus legalising the general practice before the Act.

Revenue.—The Finance Act (No. 7, U.K.) raised the income tax from 1*s.* 2*d.* to 1*s.* 3*d.* (reduced to 11*d.* by the Act of 1903) in the pound, and continues the 6*d.* duty on tea, and additional customs and excise duties on tobacco, beer, and spirits. It also limits to 10*s.* the duty on transfers for effectuating the retirement of a trustee although no new trustee is appointed. But the main feature of the Act consisted in the new imposition of a small duty (taken off by the Act of 1903) on imported corn and flour, practically equivalent to the 1*s.* per quarter "registration fee" imposed by Sir Robert Peel at the time of the general repeal of the Corn Duties in 1846, and taken off by the late Lord Sherbrooke (then Mr. Robert Lowe) in 1869.

Shop Clubs.—The Shop Clubs Act (No. 21, U.K.) of Major Evans Gordon, which was backed also by Mr. H. Samuel, Sir E. Strachey, Sir A. Rollit, Sir C. Dilke, Sir H. Bullard, Mr. Yoxall, Mr. Hay, Dr. Macnamara, Mr. Holland, Mr. G. White and Mr. Goulding, creates two criminal offences on the part of the employers of workmen in connection with a workshop, factory, dock, shop, or warehouse. The first offence is that of requiring as a condition of employment that the workman should cease to belong to a friendly society, or that the only friendly society he belongs to should be the "shop club," or "thrift fund"; and the second that of requiring that the workman shall join a shop club or thrift fund unless it be registered under the Friendly Societies Act and certified by the registrar as (1) affording to the workman "benefits of a substantial kind in the form of contributions or benefits at the cost of the employer in addition to those provided by the contributions of the workman," and (2) not being a society which annually or periodically divides its funds. The offences are punishable by fine. There is a provision for compensation to a workman ceasing to be member of a shop club on leaving his employment.

Telegraphs.—The Pacific Cable Amendment Act (No. 26, B.E.) substitutes the Government of the Commonwealth of Australia for the Governments of New South Wales, Queensland, and Victoria in the Pacific Cable Act, 1901.

2. ISLE OF MAN.

[*Contributed by* His Honour S. Stevenson Moore.]

The legislation of the Island during 1902 has consisted only of amending Acts of no general interest.

3. THE CHANNEL ISLANDS: JERSEY.

[*Contributed by* EDMUND T. NICOLLE, ESQ.]

Militia Law.—The only legislation of importance during 1903 is the Law on the Militia, passed by the States of Jersey on March 10th, 1903, and confirmed by Order in Council dated May 20th, 1903.

This Law repeals the Militia Law of 1881, and comes into force on January 1st, 1904.

Under its provisions, every inhabitant of Jersey is liable, from the age of sixteen to that of forty-five inclusive, to serve in the Royal Jersey Militia—

(*a*) If he is a native of Jersey or if his father were a native of the Island;

(*b*) If, being a British subject, he holds real property in the Island, either in his own name or in that of his wife, or carries on in the Island a profession, trade, or calling.

A person is deemed an inhabitant if he have resided in the Island for a period of two years.

The service, which is gratuitous, personal, and compulsory, is divided into three categories:—

1. Preparatory Service.
2. Active Service.
3. Reserve.

The establishment of the force is to be eighteen hundred men, not including officers.

The active service is to be ten years, but may be reduced by the Lieutenant-Governor. From the active service the men are to be transferred to the reserve, where they remain until they complete forty-five years of age. So far as the active service is concerned, a contingent of one thousand men is to undergo annually a training in camp of nine days, and will have also to do firing exercises and manœuvres (eight days, not consecutive).

The training in camp is to be carried out in four sections, at different times of the year, to suit the convenience of the men and the population generally. As an exception to the principle of gratuitous service, men undergoing training in camp will be paid. To obtain the men required, an appeal will be made to the islanders to volunteer. In the event of an insufficient number of volunteers coming forward, recourse will be had to a system of ballot amongst those liable to serve, in order to bring the force up to the required strength. The reservists will do four days' drill annually up to thirty-five years, and after that age only two.

The militia is to consist of two regiments, one of artillery and the other of infantry. A portion of the cost of maintaining this force is at the charge of the States of the Island; the remainder is to be defrayed by the British Government. This militia will be under the Army Act, 1881.

II. BRITISH INDIA.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—11.

Public Library.—The Imperial Library (Indentures Validation) Act, 1902 (No. 1), is of the nature of a private Act, but is interesting as making provision for the establishment of an Imperial Public Library and Record Office at Calcutta.

Cantonments.—The Cantonments (House Accommodation) Act, 1902 (No. 2), deals with a subject which had been occupying the attention of the Indian Legislature for some fourteen years. Its object is to secure better accommodation for military officers in cantonments, and it attempts to reconcile military requirements with the customary rights of house-owners by laying down some rather complicated rules and conditions, under which houses within cantonment limits may be appropriated when necessary for the use of officers.

Tramways.—The Indian Tramways Act, 1902 (No. 4), extends to certain tramway companies the power of paying interest out of capital during construction which was given to railway companies by the Indian Railway Companies Act, 1895.

Administrator-General and Official Trustee.—At the beginning of 1902 a vacancy occurred in the office of Administrator-General of Bengal, and by the Administrator-General and Official Trustee Act, 1902 (No. 5), the Legislature took the opportunity of making certain changes in the law, both for Bengal and for other provinces. The power of combining in one person the offices of Administrator-General and of Official Trustee is continued; a deputy may be appointed; the Administrator-General is to be paid by salary instead of by commission; the prohibition imposed by the Act of 1874 on the taking of any commission or agency charges by private executors or administrators is repealed, but a limit is fixed for the charge which can be made; and powers are given to the High Court for dealing with private executors and administrators, and for giving directions as to the administration of estates by the Administrator-General or Official Trustee. In certain cases the estates of foreign subjects may be administered by consular officers.

"**Pandhari**" **Tax.**—Act 6 of 1902 abolished the "pandhari" tax formerly levied in the Central Provinces. This was practically an income tax on incomes below the minimum fixed by the Income Tax Act.

United Provinces.—The designation of "North-Western Provinces" as applied to the territories comprising Agra and Allahabad had long been

a misnomer, and the creation of the new North-West Frontier Province strengthened the case for a change of name. The territories formerly administered by the Lieutenant-Governor of the old North-Western Provinces and by the Chief Commissioner of Oudh have now been united into a single Lieutenant-Governorship, and the United Provinces (Designation) Act, 1902 (No. 7), declares that these territories are henceforth to be known as the United Provinces of Agra and Oudh.

Countervailing Duties.—The Indian Tariff (Amendment) Act, 1902 (No. 8), was a temporary Act which expired on August 31st, 1903. The Tariff Act of 1894 had given power to impose countervailing import duties on bounty-fed sugar. It was, however, found that these duties had failed to check the importation of the sugar, and the reason assigned was that in imposing them consideration had been taken of bounties directly granted by the State, but not of bounties indirectly arising from the operation of "cartels" or trusts. Under these circumstances, the Act of 1902 imposed a further special import duty in certain cases, and enacted that "where the rate of duty imposed in any country, dependency, or colony upon sugar not produced therein exceeds the rate of duty or other taxation upon sugar produced therein by more than the equivalent of 6 fr. per one hundred kilogrammes in the case of refined sugar, or 5 fr. 50 c. per one hundred kilogrammes in the case of other sugar, then upon the importation of any sugar from such country, dependency, or colony into British India, whether the same is imported directly from the country of production or otherwise, and whether it is imported in the same condition as when exported from the country of production, or has been changed in condition by manufacture or otherwise, the Governor-General in Council may by notification in the *Gazette of India* impose, in addition to any other duty or taxation imposed under this Act or any other law for the territory in force, a special duty not exceeding one moiety of such excess."

Under the power thus given, the Government of India imposed an additional duty on German sugar of Rs. 2 13 9 per cwt., and on Austro-Hungarian sugar of Rs. 3 3 9 per cwt. The reason for making the Act temporary was that the condition of things may be materially altered by the operation of the recent Sugar Convention. It has, by a subsequent Act, been continued until March 31st, 1904.

Currency.—The Indian Paper Currency Act, 1900 (Act 8 of 1900), authorised the issue of currency notes on the security of gold held in London, and empowered the Government to use the gold in the Paper Currency reserve, whether in England or in India, for the purchase of silver to be coined into rupees. This Act was to remain in force for two years only, but has now been made permanent by the Indian Paper Currency Act, 1902 (9 of 1902).

Emigration.—The Indian Emigration (Amendment) Act, 1902 (No. 10), limits the operation of the Indian Emigration Act, 1883, to persons emigrating

for the purpose of employment in unskilled labour, and lays down special regulations with respect to natives of India emigrating for the purpose

(*a*) of working as artisans, or

(*b*) of any exhibition or entertainments, or

(*c*) of service in any restaurant, tea-house, or other place of public resort, or

(*d*) (subject to some important limitations) of domestic service.

Any person wishing to engage a native of India to depart by sea from India for any such purpose must apply for permission to the local Government, stating in his application certain specified particulars, and the person engaged must appear before, and be registered by, the Protector of Emigrants.

Village Sanitation.—An Act was passed in 1889 to provide for village sanitation in the Central Provinces, but does not appear to have had much operation. The reasons assigned for its failure were that the forms of taxation authorised by it were not suitable and that it gave no power to impose temporary taxation for a specific purpose. The new Act (2 of 1902) which now takes its place gives power to raise money for sanitary purposes (1) by an assessment on houses and lands and on the property of the owners and occupiers of houses and lands; (2) by the levy of licence-fees on professional weighmen and measurers; (3) by the levy of tolls on carts, animals and packhorses, and on animals sold; (4) by the levy of rents from dealers temporarily occupying open ground; and (5) by the levy of fees on the voluntary registration of cattle-sales. The Act also raises the limit of size of villages to which it can be applied. Its provisions are not suitable to small villages.

2. MADRAS.

Acts passed—2.

Courts of Wards.—The measure which has become law as the Madras Court of Wards Act, 1902 (No. 1), is a consolidating and amending Act, and was the subject of exceptionally long and animated discussions both in the Legislative Council and in the Select Committee to which the Bill was referred. It re-enacts, among other things, the provisions of an Act of 1899, the main object of which was to confer on the Executive Government larger powers for preventing the breaking up and mismanagement of old landed estates. Readers of the Journal will remember that enactments of a similar nature and with similar objects have recently been passed for other parts of India. Under the new Act (s. 9) the following proprietors are to be deemed disqualified for the management of their property:—

(*a*) Minors;

(*b*) Women declared by the local Government to be incapable of managing their property;

(*c*) Proprietors adjudged by a competent civil Court to be of unsound mind and incapable of managing their property;

(*d*) Proprietors declared by the local Government to be incapable of managing their property owing to any physical or mental defects or infirmity rendering them unfit to manage their property.

Cases of this kind are brought by a collector before the Court of Wards. In cases (*b*) and (*d*) the local Government may, on the recommendation of the Court of Wards, declare a proprietor to be disqualified, and in any case falling under s. 9, may order that Court to assume the superintendence of the person or property of the proprietor or of both (s. 15). A declaration of disqualification under paragraph (*d*) is not to be made unless the local Government is satisfied that "it is expedient in the public interests" that the property of the proprietor should be managed by the Court (s. 16). No declaration of the local Government under s. 15, and no act done in the execution of any discretionary power conferred by the Act, is to be questioned in any civil Court (s. 48). When the Court of Wards assumes superintendence, it has exclusive power of dealing with the interests of mortgagees and other encumbrancers. It will be observed that the powers exercisable in case (*d*) resemble the jurisdiction exercisable under certain systems of Continental law in the case of "profligates," but under the Indian law these powers are exercised by the Executive Government and not by the civil Courts. This was, perhaps, the feature of the measure against which most criticisms were directed in the discussions before the Council.

Impartible Estates in Land.—The main object of the Madras Impartible Estates Act, 1902 (No. 2), was to overrule a decision given by the Judicial Committee of the Privy Council in 1885. In the case of *Rani Sartaj Kuari* v. *Rani Deoraj Kuari* (L.R. 15 Indian Appeals 51) it was held that where an ancestral raj, in other respects governed by the Mitakshara law, is by custom impartible and by custom descendible to a single heir by the rule of primogeniture, in order to render the rajah's alienations invalid, as made without the consent of his son, it must be shown that the rajah's power of alienation is excluded by the custom or by the nature of the tenure. It was held that in such a raj the son is not a co-sharer with his father, and that property in ancestral estates acquired by birth under the Mitakshara law is so connected with the right to partition that it does not exist independently of that right. Consequently a claim made by the rajah's eldest son to set aside a grant of land made by his father to one of his wives was not allowed.

The Act of 1902 scheduled some 134 estates, declared them to be impartible, and restricted the proprietor of each of these estates from alienating his estate or any portion of it except in circumstances where alienation would be permissible by law if the estate were ancestral property and the proprietor occupied the position of managing member of a joint

Hindu family governed by the ordinary law of succession. No decrees for debts contracted after the passing of the Act by any such proprietor otherwise than under the circumstances aforesaid were to be executed against his scheduled estate. Temporary transfers, such as mortgages and leases, were to be treated as alienations. The Act barred the commencement or continuance of suits in which the question of partibility was in issue, and no civil Court was in any suit or proceeding, *whether then pending or not*, to decree or order a partition of any of the scheduled estates. Any estate judicially declared after the passing of the Act to be impartible was to be treated as if included in the schedule. Thus certain estates were declared to be impartible and all impartible estates were made inalienable. It was stated by the introducer of the measure that the scheduled estates were the military fiefs or revenue farms which were in existence at the time of the permanent settlement of 1802. The original intention was to precede the Act by a suspensory measure, but at the last moment the procedure was altered and the Act was made temporary, and was limited to expire on June 1st, 1903. It has since been continued for another year, but with important modifications. The prohibition of proceeding with pending suits has been repealed, and eight of the scheduled estates have been struck out of the schedule. It is evident that the Indian pendulum is at present swinging strongly in the direction of taking land out of *commercium*, and the Madras Act is a very remarkable concession to this tendency. Whether it is necessary or desirable on political, social, or economical grounds to prohibit indefinitely the division or alienation of landed estates, the ownership of which was some hundred years ago associated with the performance of some military or fiscal duties, is a question which lends itself to a good deal of argument.

3. BOMBAY.

Acts passed—4.

Dekkhan Agriculturists.—The Dekkhan Agriculturists' Relief Act, 1902 (No. 1), amends one of the provisions in the series of Acts passed on this subject by the Governor-General in Council. Under s. 5 of the Indian Councils Act, 1892, local legislatures may amend such Acts with the previous sanction of the Governor-General.

Karachi.—Act 2 amends the constitution of the Karachi Port Trust.

Bombay Police.—The City of Bombay Police Act, 1902 (No. 4), which is a consolidating and amending Act, forms a comprehensive police code for the city of Bombay. It consists practically of three parts. The first part deals with the organisation, constitution, and discipline of the police force. The second part applies to the Bombay police those sections of the general Code of Criminal Procedure from which the Police Commissioner and police of the

city had always been specially exempted. The third part may be described as a local supplementary police code for the purpose of meeting local needs and requirements.

4. BENGAL.

Acts passed—2.

The two Bengal Acts are of merely local interest.

5. UNITED PROVINCES.

Acts passed—0.

The Legislature of the territories formerly known as the North-Western Provinces and Oudh, but now to be known as the United Provinces of Agra and Oudh, did not pass any Acts in the year under review.

6. PUNJAB.

Acts passed—3.

Waste Lands.—The Sind-Sagar Doab Colonisation Act, 1902 (No. 1), provides machinery for the establishment of the title of the Government in land to be acquired for the purpose of reclaiming and colonising certain waste lands between the river Indus and the rivers Jhelum and Chenab.

Steam-Boilers.—It is interesting to find that the increase in the number of boilers in use in the Punjab has necessitated the passing of an Act (No. 2) to provide for the inspection of steam-boilers and prime movers attached thereto.

Coronation Durbar.—A temporary Act (No. 3) embodied special police regulations for the areas in which the great Coronation Durbar was held at Delhi.

7. BURMA.

Acts passed—4.

The Legislature of Burma passed Acts amending its Village Regulation Acts (No. 1), the Rangoon Police Act (No. 2), and its general Municipal Act (No. 3), and consolidating its Forests Acts (No. 4).

8. REGULATIONS UNDER 33 VICT., C. 3.

Regulations made—4.

Kachin Hill Tribes.—Regulation No. 1 lays down further restrictions on the possession and transport of opium in the regions occupied by the Kachin Hill tribes.

Aden Pilgrims.—Regulation No. 2 extends certain provisions of the Aden Pilgrim and Pauper Regulation, 1887, to persons not being natives of Asia or Africa.

Sea Traffic in Arms and Ammunition.—Regulation No. 3 arms the Political Resident at Aden with the power of placing restrictions on the traffic in arms and ammunition in the Gulf of Aden, which, it will be remembered, washes the northern coast of the Somaliland Protectorate.

Kohat Local Dues.—Regulation No. 4 declares the immemorial right of the Khan of Tari to levy the dues known as "tirni" and "bua" in certain estates situated within the district of Kohat in the North-West Frontier Province, and makes provision for the speedy and effective realisation of these dues.

Useful information as to the recent course of legislation in India, and as to the administrative questions with which this legislation is concerned, is to be found in the latest Decennial Report on the Moral and Material Progress of India, published as a Parliamentary paper in the summer of 1903 (East India, Progress and Condition, 1903, C. 249).

III. EASTERN COLONIES.

1. CEYLON.

[*Contributed by* Frederick H. M. Corbet, Esq., *and* Richard F. Honter, Esq.]

1901.

(N.B.—The Ordinances of 1901 summarised below were not available to the editors in time for inclusion in the review of that year's legislation.)

Lands Attached to Buddhist Temples (No. 3).—The Buddhist Temporalities Ordinance was passed in 1889, and its operation having demonstrated the necessity for modifications, this measure is concerned with the constitution of the provincial committees, or local administrative bodies, created by the original Ordinance.

Power to make necessary rules for the conduct of business is given to

these committees. The procedure at the election or deposition of the spiritual and lay guardians of the temples is indicated. Power is also given to determine the share of each temple in the expenditure consequent on the execution of the provisions of the Ordinance.

Import Duties (No. 7).—By this amendment of the principal Ordinance of 1869 the Governor is authorised to order exemption from payment of duty in the case of goods on which duties are ordinarily laid; he is, however, required to state his reasons in the order. The rest of the Ordinance deals with the warehousing of goods.

Municipal Councils (No. 8).—Certain prior enactments are repealed. The scope of the by-laws which may be made by councils is defined. The progress and growth of Colombo, the capital of the Island, have necessitated the provision of a by-law under which additional offices to those already in existence may be created.

Sale of Manures (No. 12).—The increase of plantations in the Colony, with a consequent enhanced demand for fertilisers of the soil, has resulted in the manufacture and importation of either inferior or adulterated material. The preservation of the standard of purity is the immediate object of this Ordinance. The use of any artificial process constitutes manufacture for the purpose of this enactment.

On the sale of quantities of manures weighing more than one hundredweight the vendor is required to furnish a guarantee containing the name and constitution of the article. A heavy penalty is imposed on a breach of this duty or the delivery of a false guarantee. Agricultural analysts are to be appointed whose certificates will be sufficient evidence of the composition of manures which have been made the subject of litigation. Such cases are in the jurisdiction of police courts; from their decisions appeals may be made to the Supreme Court.

1902.

Ordinances passed—20 (between January 18th and December 22nd, 1902).

Passenger Transport (No. 1).—The introduction of tramways into Colombo necessitated the amendment of the principal Ordinance of 1901 dealing with the regulation of vehicular traffic. Rates and fares for the carriage of passengers by tram-cars had been made the subject of an agreement between the Colombo Municipal Council and the company who undertook the construction of the line. This Ordinance provides that rates and fares be fixed accordingly.

Repression of Crime (No. 3).—Provision is made by this Ordinance for the assessment and allotment of a charge imposed on villages in respect of the police or other protection afforded them. The clause in the principal Ordinance dealing with the system of assessment and allotment is amended.

Contributions in money may be commuted for labour at a fixed rate. Failure to pay or perform labour is punishable with rigorous imprisonment.

Employment of Natives in Theatrical Performances Abroad (No. 5).—This paternal measure on the part of the Ceylon Government provides that contracts with natives and residents in the Island for their employment in exhibitions, or theatrical, musical, or spectacular performances must be in writing, and the duty of attestation is imposed on specified officers at the port of embarkation; no emigrants of this description may be shipped until the issue of a pass by the collector of customs. Before the pass is granted, the employer is required to execute a bond with two approved sureties resident in the Island in favour of the collector, guaranteeing the return of his employees to the island at the expiration of their service. Every master of a ship or employer guilty of a breach is punishable by a fine and by imprisonment of either description for two years.

Jaffna Hindu College (No. 6).—This Ordinance incorporates an educational institution to be conducted "on purely Hindu lines."

Municipal Councils (No 7).—Changes in and additions to the principal Ordinance of 1887 are effected. Provision is made for the election of four standing committees on law, sanitation, finance, and works respectively. In the event of the chairman being in a minority in a disagreement with a standing committee, reference may be made by him to the general body of the council. Rates and taxes may not be levied on school buildings, buildings exclusively appropriated to religious worship, public libraries, burial and cremation grounds, and military buildings. Authority is granted to the councils in the following respects: Roads may be broken up for the purposes of lighting, telegraphic communication, or transport, on condition that a specification of the work has been submitted for the approval of the Governor and that the work itself will he speedily completed. Concessions may be granted to persons or firms for any purpose, with the sanction of the Governor.

Explosives (No. 8).—Local circumstances have determined a stricter form for this Ordinance than those of 1894 and 1895, which are repealed. Its expressed intention is the prevention of accident. The manufacture and importation of explosives are within the competence of the Governor, who is required to take the advice of the Executive Council before making his orders. The sale or storage of explosives is permitted under licence from the Chief Government Officer of the district where the store is situated. Explosives may not be hawked about the streets nor may they be sold to children under the age of thirteen years.

The Crown stores for military purposes are excepted from the operation of this Ordinance, and exceptions are made in favour of fireworks and explosives in small quantities for chemical purposes.

Railways (No. 9).—The extension of the railway system of the Colony has given birth to a new Ordinance (repealing that of 1885) which is not

without interest to students of the State administration of railways. Military and Government officials are privileged at the expense of the general public. In the regulation of passenger traffic there is an attempt at the solution of the problem of overcrowding; passengers having tickets for the longest distances are to be preferred to others; the public service, however, is entitled to priority even in such cases. The general manager is empowered to enforce claims against passengers by detaining their luggage.

The general manager, as the chief responsible official, is liable to a heavy fine if he fails to erect and maintain gates at railway crossings; it is within the competence of the local police magistrate to order their erection and maintenance.

Roads (No. 10).—This Ordinance is to be read with those of 1861 and 1884. It provides for the appointment and remuneration of officers to carry out the provisions of the Ordinance of 1861. The expenditure is to be met by the moneys received by the Provincial Road Committee in commutation of labour.

Game Preservation (No. 11).—One of the additions to the principal Ordinance of 1891 is a clause rendering wild animals captured or killed contrary to the provisions of this measure, or the conditions under which licence was issued, liable to confiscation after the person concerned has been convicted of the offence.

Estate Roads (No. 12).—Applications for the construction of branch roads leading from a principal line of traffic may be made by the proprietors of two or more neighbouring estates. A district cannot be brought within the jurisdiction of this Ordinance until the assent of the proprietors of two-thirds of the acreage owned as estates has been obtained. Provision is then made for the election of a local road committee who shall appoint assessors to determine the liability of estates and who shall be responsible for the maintenance of the roads. Appeals may be taken from the local assessors to the Provincial Road Committee, from whose decision an appeal lies to the Governor.

Export Duty on Tea (No. 13).—The export duty levied on tea is increased, the funds thus obtained being devoted to the advertisement of Ceylon tea in foreign countries. The duty, collected by the Government, is virtually administered by the Planters' Association and the Chamber of Commerce, subject to the approval of the Governor in Council.

Village Tribunals Stamp Ordinance (No. 14).—A stamp duty is levied on civil cases tried before village tribunals. A successful plaintiff may have the value of the stamps, which he had supplied at the commencement of the case, awarded him as costs.

Printing Presses (No. 16)—The registration of printing presses is enforced under heavy penalties. No book or paper is to be printed without the names of the printer, publisher, and place of publication.

Lepers (No. 17).—The principal Ordinance (No. 4 of 1901) is amended

by the insertion of a provision empowering the Governor to employ some other medical practitioner besides the principal Civil Medical Officer as one of the two doctors on whose certificates alone a leper can be removed to the asylum.

2. STRAITS SETTLEMENTS.

[*Contributed by* WALTER J. NAPIER, ESQ.]

Ordinances passed—37.

Education: School Attendance (No. 1).—The School Attendance Ordinance, 1902, provides for the compulsory attendance of children at school for instruction in their own language. It applies to such districts as are proclaimed by the Governor in Council, and renders regular attendance compulsory on male children between such ages (not less than seven or higher than fourteen) as shall be fixed from time to time by the same authority. "Regular attendance" is to mean attendance for not less than 50 per cent. of the school days in each month.

The following are (amongst others not defined) reasonable excuses exempting a child from regular attendance:—

(i) That there is no school where a free education in the child's own language is provided by the Government within a distance of one and a half miles from his residence;

(ii) That the child is attending aschool where the English language is taught;

(iii) That the child has passed the highest standard in a Government vernacular school, or in a school receiving a grant in aid from Government; and

(iv) That the child has been prevented from attending school by sickness or any other unavoidable cause.

This Ordinance marks a new departure in legislation, and is an attempt to grapple with a very difficult question. To understand its scope, it is necessary to have in mind some facts relating to the population of the Colony, and the education given in it. At the census of 1901 the total population was computed at 572,249, composed of very divers races; thus, out of every 10,000, 88 were Europeans and Americans, 134 Eurasians, 4,927 Chinese, 3,758 Malays and other natives of the Archipelago, 999 Tamils and other natives of India, and 94 "other nationalities."

There are a number of Government and Government-aided English schools in the Colony, but there is practically no provision by Government for any vernacular teaching except in the Malay language, and for this the Government maintain over 140 schools. The Ordinance will, then, be confined in its operation, for the present at any rate, to the Malays. As a start, the Ordinance was enforced in the agricultural territory of Malacca, and has been

pronounced such a success that it is proposed shortly to introduce it into Province Wellesley. At present it is not proposed to introduce it into towns.

Trust Funds (No. 2).—An Ordinance to facilitate the investment of trust and other funds in the United Kingdom in Straits Settlements Government securities was passed, on the instructions of the Secretary of State, to enable the Colony to be in a position to take advantage of the provisions of the Colonial Stock Act, 1900. At present there are no Government securities in the market, the Colony being in the happy state of having no debt, except a small loan from the Federated Malay States.

Women and Girls' Protection.—No. 3 amends the Women and Girls' Protection Ordinance, 1896.

Land.—No. 4 amends the Acquisition of Land for Public Purposes Ordinance, 1890, in several particulars.

Payment of Salaries in Sterling (No. 6).—Payment of Government officials in sterling having been partially introduced, this Ordinance amends the Widows' and Orphans' Pension Fund Ordinance, 1901, to make it apply to officials paid in sterling.

Stolen Property.—No. 7 amends Indian Act XIII. of 1856 by extending its provisions for punishment of a person having in his possession property which may be reasonably suspected of being stolen or fraudulently obtained, and who fails to account satisfactorily how he came by the same, to a person having possession in a house, building, ship, vessel, or other place. This legislation was rendered necessary through a decision of the Court of Appeal that the Indian Act only applied to possession in a street or public place. The Ordinance provides for heavier penalties than those stated in the Indian Act, and gives a right of search.

Jurisdiction.—No. 8 extends the jurisdiction of the Court of Requests from $50 to $100, and makes some amendments in its procedure.

Tramways.—No. 10 authorises the construction of tramways in the settlement of Singapore by a company, who are to pay to the Municipal Commissioners a royalty of 5 per cent. per annum of the net profits of the undertaking for the first thirty-five years, and of 15 per cent. per annum after that time, until the tramways are purchased by the Municipal Commissioners under the powers contained in the Ordinance.

Married Women.—No. 11 introduces the Married Women's Property Act, 1882, as amended by that of 1893, into the Colony. It applies to all "married women," which expression is by s. 16 to include any woman married in accordance with her "religion, manners, or customs," with the exception of Mohammedans, who are dealt with by the Mohammedan Marriage Ordinance, 1880.

Penal Code.—Nos. 12 and 35 have for their object the amendment of the Penal Code. This Code, which became law in 1871, was taken from the Indian Penal Code, and the object of the Ordinance is chiefly directed to the incorporation of provisions of Indian Acts X. of 1886, I. of 1889, III.

of 1894, and III. of 1895, so as to bring the Code into line with the present Indian Penal Code.

Foreshore.—No. 13 amends the Foreshores and Sea Bed Ordinance, 1900 (so entitled, but passed in 1901); it provides that in special cases, with the approval of the Secretary of State, leases of the foreshore and sea bed may be for a longer term than a hundred years.

Cruelty to Animals.—No. 14 is for the prevention of cruelty to animals. It is very wide in its scope, "animal" being defined as any bird, beast, fish, reptile, or insect, whether wild or tame. Besides the ordinary penal sections directed against cruelty, causing animals to fight, and employing animals unfit for labour, the Ordinance gives power to the Government and the municipalities to establish infirmaries for the treatment of animals, and an infirmary is being built at the present time in Singapore.

Prevention of Crime.—No. 16 enables the Governor in Council to employ special means for the prevention of crime in particular districts in the Colony. In a proclaimed district any person found between 9 p.m. and 5 a.m. not carrying a lighted lantern, or loitering in the streets or on private property, and unable to give a satisfactory account of himself, is subject to a fine or imprisonment, or to both. The Ordinance, which owed its existence to a long series of burglaries in Singapore culminating in an atrocious murder of a European resident, has never been brought into force, crime having, through the efforts of the police, resumed its normal state.

Railways.—No. 18 enables the Governor to lease or demise the Singapore and Kranji Railway. No lease has been, nor will in all probability be, made, and the line is being worked as a Government railway.

Chinese Immigrants.—No. 19, which consolidates and amends the law for the protection of Chinese immigrants, deserves more than a passing notice. The main object of the Ordinance is to enable the Protector of Chinese (an officer first appointed in 1877) to superintend Chinese immigration and to see that coolies who are brought down from China for labour at the expense of other persons are protected. Of the 207,156 Chinese immigrants who arrived in Singapore last year, 184,611 had paid their own passage-money, while the remainder had been brought down by recruiters, who pay the passage and expenses of the immigrant, in some cases giving him a small advance as well, on condition that the coolie ultimately works off by his labour the expenses so incurred.

The plan of the Ordinance is as follows: To ensure proper treatment of the passenger and sanitation of the ship, every ship importing more than twenty immigrants has to carry a qualified medical practitioner and to obtain a certificate from a proper officer that the ship was properly equipped and manned for the voyage (s. 33).

The agent of the ship is to give notice of the probable date of arrival, and of the number of immigrants to be landed, to the Protector of Chinese

(s. 7 [1]). On arrival the ship is to give the appropriate signal when she is boarded by an officer of the Protectorate who makes enquiries from the captain for the purpose of the Ordinance and of the Women and Girls' Protection Ordinance, 1896 (s. 8); and no person is allowed to board the ship until the Protector has disembarked the immigrants (s. 9). The immigrants are taken from the ship to a depôt called the Examination Depôt, and there examined as to the payment of their passage-money and as to advances, and as to any agreement to repay such passage-money and advances, or any contract to labour entered into or proposed to be entered into by them, and as to their ages and fitness to labour, and as to any other matters necessary for the Ordinance or for the Women and Girls' Protection Ordinance, 1896 (s. 10). There are penalties for non-attendance at the Examination Depôt (s. 12), and provisions for search (s. 11).

Every immigrant who upon examination is found not to be indebted for his passage-money or advances is allowed to leave the Examination Depôt (s. 13), but immigrants indebted for passage-money or advances, if fit for labour, are detained for a period not to exceed ten days in licensed detention depôts until they have made arrangements satisfactory to the Protector for the payment of their debts (s. 15).

An immigrant detained under s. 15 may be dealt with as follows:—

(*a*) If under sixteen or over forty-five, he may be sent back to China (s. 16 [2]).

(*b*) If he has been brought to the Colony by fraud or by misrepresentation as to his work or wages, the Protector may release him or treat him as permanently unfit for labour in the Colony (s. 14).

(*c*) If he promised to find on his arrival some person to repay his passage-money and he is unable to find such a person without entering into a contract to labour, and is unwilling to enter into such contract, he may be released or sent back to China at the expense of his creditor (s. 21).

(*d*) If he promised to enter into a contract to labour on arrival within the Colony, and he refuses without reasonable cause to enter into such a contract, he is liable to fine or imprisonment; and if he finally persists in such refusal, he may be sent back to China (s. 22).

(*e*) If he promised to enter into a contract to labour in any specified kind of work, then (1) if he is declared upon medical examination unfit for such work, he may at the Protector's discretion be sent back to China, enter into a contract for such other labour as he is fit to perform, or be released (s. 23); or (2) if the person bringing him be unable to find such employment, he may at the Protector's discretion be released or sent back to China (s. 24).

An immigrant unfit for labour may be ordered to a hospital and detained there at the expense of his creditor until he is fit for labour; and

if he is found to be permanently unfit, he is sent back to China at the expense of his creditor (s. 16).

SS. 17, 18, and 19 are penal provisions to ensure the immigrant being removed to and being detained in hospital or depôt.

SS. 28, 29, and 30 provide that every contract entered into by an immigrant is to be in writing, and explained to the immigrant by an officer of the Chinese Protectorate, and to impose safeguards on the immigrant with regard to the contract. Under s. 32 every immigrant under a contract for service for a definite period can determine the contract on giving one month's notice, and on payment of all advances and a sum of $25 as "smart money." In case of ill-usage of an immigrant by his employer, the contract may be cancelled by a police court (s. 31).

The penalty for actual or attempted importation of any Chinese immigrant contrary to the provisions of s. 33 is a fine not exceeding $1,000, or imprisonment not exceeding twelve months, or both, and the ship used in such importation may be forfeited.

Partition (No. 20).—The Partition Ordinance introduces the Partition Acts of 1868 and 1876.

Savings Banks.—No. 21 amends the Savings Bank Ordinance, 1879, by introducing a clause limiting the responsibility of the Bank in case of fraud. This Ordinance evoked considerable opposition from the unofficial members of the Council.

Copyright Telegrams (No. 22).—The Telegram Copyright Ordinance is taken *mutatis mutandis* from an Ordinance of the same character in Ceylon, the Telegram Copyright Ordinance, 1898.

Mortgagees' Profit Costs.—No. 23 introduces into the Colony the Mortgagees' Legal Costs Act, 1895.

Military Manœuvres.—No. 31, which is entitled the Military Manœuvres Ordinance, 1902, is put forward for the purpose of enabling His Majesty's forces in the Colony "to obtain that training in field movements over all sorts of ground and in the construction of modern field entrenchments which has been shown by the war in South Africa to be absolutely essential where military efficiency is desired." Persons engaged in manœuvres (of which, if the troops engaged are over five hundred in number, one month's notice is to be given) have power to pass over and encamp and construct military works not of a permanent character and execute military manœuvres upon any land, but provision is made against entry of dwelling-houses, places of worship, schools, factories, or stores, or land attached to any place of worship or school or enclosed within the curtilage of any dwelling-house. Penal provisions are contained to prevent interference with the manœuvres, and provisions are made for compensation for damage.

Surveyors.—No. 37 provides for the licensing of persons practising as surveyors in the Colony. This Ordinance is adapted from Part I. of the Ceylon Ordinance No. 15 of 1889, and prevents any person practising as

a surveyor or leveller in any part of the Colony unless licensed by the Surveyor-General. Only plans made by licensed surveyors are to be received in the Registry of Deeds.

Other Amending Acts:

Lands.—No. 24 amends the Malacca Lands Ordinance, 1886.

Holidays.—No. 26, the Holidays Ordinance, 1879.

Crimes.—No. 27, the Criminal Procedure Code, 1900.

Pensions.—No. 28, the Pensions Ordinance, 1887, and No. 30, the Widows and Orphans' Pension Fund Ordinance, 1901.

Jinrikishas.—No. 32, the Jinrikisha Ordinance, 1900.

Christmas Island.—No. 33, the Christmas Island Ordinance, 1900.

Mohammedan Marriages.—No. 34, the Mohammedan Marriage Ordinance, 1880.

Opium.—No. 36, the Opium Ordinance, 1894, in matters of detail.

3. MAURITIUS.

[*Contributed by* His Honour Mr. Justice Wood Renton, *on behalf of the Local Committee. Revised by the Committee.*]

Ordinances passed (July 11th, 1902—January 28th, 1903), 47.

Re-afforestation.—The Re-afforestation Loan Ordinances, 1902 (No. 25 of 1902) and 1903 (No. 22 of 1903), enable the Governor to borrow a sum not exceeding £110,000 for the purchase of land and for other purposes in connection with the re-afforestation of the island.

Public Officers' Widows and Orphans' Fund.—The Widows and Orphans' Fund (Amendment) Ordinance, 1902 (No. 3 of 1902), deals with a difficulty which might arise under the principal Ordinance (No. 2 of 1886), in the event of a public officer dying and of any pension becoming payable to his minor children, to whom he had appointed or left no guardian or legal representative. The Ordinance obviates this difficulty by providing (Art. 1 [2]) that every public officer, on becoming an associate of the fund, shall be held to have agreed that, under such circumstances, the directors of the fund, or the Crown agents on their behalf, may appoint some fit person to receive, and give a legal discharge for, such pension, and to be, for all purposes connected with it, the testamentary trustee and guardian of the minors.

Exclusion of Vagrants.—The Vagrant Exclusion Ordinance, 1902 (No. 9 of 1902), enables the Governor by order to prohibit, either absolutely or subject to such conditions as he may impose, the landing in the Colony of any persons arriving on board any vessel whom the Inspector-General of Police reports to him as being "destitute" or belonging to "any criminal or vicious class" (Art. 1). The order is to be notified to the master by the Colonial Secretary (*ib.*). Any person landing may be compulsorily re-embarked

(Art. 2). A master contravening any order under the Ordinance incurs liability to a maximum fine of Rs. 500, and his vessel is subject to a maritime lien in favour of the Crown for a sum of Rs. 500 in respect of each person landed in breach of a prohibition (Arts. 3, 4). The term "destitute person" means any person being a pauper "or who, in the opinion of the Inspector-General of Police, has not any permanent means of subsistence or livelihood, whether on account of his nationality or otherwise, [or] of obtaining employment in the Colony" (Art. 5). There is no definition of "criminal or vicious class."

Military Survey.—The Military Survey Ordinance, 1902 (No. 14 of 1902), gave the officer in charge of the military survey, recently made of the island by direction of the Secretary of State for War, wide powers of entering and operating upon private property, setting up stations, masts, flags, etc., and examining boundary lines (but these were not to be displaced or altered), and cutting trees, canes—subject, in the case of valuable trees and of canes, to compensation (Arts. 2, 3, 4, 5). All Government officers were required to afford to the officer in charge of the survey all necessary assistance and co-operation (Art. 1).

Criminal Law.—The Penal Code (Amendment) Ordinance, 1902 (No. 16 of 1902), amends the Ordinance No. 22 of 1901 (as to which see *Jour. Soc. Comp. Leg.*, N.S., No. X., pp. 245-6) as regards the right of a person attacked in a newspaper to have his reply published. The obligation of the owner or editor of a newspaper to publish such a reply only exists where the reply does not amount to an offence under any law in force in the Colony, and "is not foreign to the subject in connection with which such person has been named or referred to in the newspaper." In case of conviction for failure to publish a reply, the owner or editor of the newspaper shall be bound to insert it within three days of his conviction, under liability to a further maximum penalty of Rs. 500.

The Flogging Regulation Ordinance, 1902 (No. 33 of 1902), framed on lines adopted in other colonies, fixes a maximum of fifteen strokes in the case of adults and eight in that of juvenile offenders, punished by flogging under the sentences of the Courts or prison regulations (Art. 2). No sentence of flogging is to be passed upon a female (Art. 7).

The Probation of Offenders Ordinance (Amendment Ordinance), 1902 (No. 39 of 1902), extends the principal Ordinance (No. 38 of 1898), which is an application of the *loi Bérenger* to the Colony, to crimes. The Ordinance of 1898 extended only to misdemeanours and contraventions.

Poor Law.—The Poor Law Ordinance, 1902 (No. 17 of 1902), constitutes a Poor Law Department, under a Poor Law Commissioner, assisted by Poor Law officers, clerks, etc., in lieu of the Poor Law Commission created by No. 10 of 1875. The Ordinance codifies the law as contained in the fundamental Ordinance, No. 11 of 1868, and the Ordinance No. 10 of 1875.

Electric Lighting.—The Electric Lighting and Power Ordinances, 1902 (Nos. 18 and 36 of 1902), are measures analogous to the Imperial Electric Lighting Acts, 1882 and 1888.

Education.—The Education (Amendment) Ordinance, 1902 (No. 20 of 1902), amends the Ordinance of 1899 (No. 33 of 1899) with reference to the English Scholarships (Laureateships of the Royal College) in Mauritius.

Mechanical Transport.—In consequence of the surra plague, which has attacked horses and cattle, the introduction, on a large scale, of mechanical tramways and other means of transport into the island became necessary, and the Mechanical Transport Loan Ordinance and Amendment Ordinance, 1902 (Nos. 34 and 44 of 1902), were passed with a view to enabling the Colonial Government to assist planters in purchasing them. The scheme of this legislation is the following. The Governor was authorised to borrow by debentures, repayable at par ten years after issue or within the ten years next following on six months' notice by the Crown agents to the registered holder, a sum not to exceed £70,000, without a resolution of the Council of Government and the approval of the Secretary of State[1] (No. 34 of 1902, Arts. 2 [1] 4 [1]). Out of the sum so borrowed the Governor, after consulting a Board of Commissioners (Art. 9)—the Hurricane Loan Board of 1894 was taken as a nucleus (Art. 1 [1])—was empowered to make advances to the owners of sugar estates for the purchase or, where that had already been effected since January 1st, 1902, for the repayment of the price of tramways for the special use of their estates. Applicants were required to furnish statements containing full particulars of the nature and cost of the tramway required and the name of the manufacturer (Art. 10), and also of any privileges and mortgages inscribed on the estate (Art. 11 [1]). Notice of every application for an advance was to be published in the *Gazette* (Art. 11 [2]), and an opportunity of lodging objections was given to mortgage creditors (Art. 12 [1], [2]). If an objection was persisted in, the applicant might move the Court or a judge for its cancellation, but only on the ground that the creditor has no right or title to make such objection (Art. 12 [3]). Advances were subjected to the following conditions (Art. 13):

(i) Fulfilment of all prescribed formalities.

(ii) The authorisation of the Crown agents to purchase the tramway for the applicant; or

(iii) If the Governor, after consulting the Board, approved, authorisation, in lieu, of (ii), of such purchase being made by the applicant himself, repayment by the Receiver-General being conditional on the production of the original manufacturer's invoice, duly receipted.

(iv) No liability to be incurred by Government or the Crown agents in connection with "the due and proper execution of the contract."

[1] The sum was in fact raised to £220,000 under this enabling clause.

(v) The amount of the advance to be the sum paid by the Crown agents under (ii) or by the Receiver-General under (iii).

(vi) Incidental costs to be paid by applicant.

Art. 14 regulated applications for loans for the payment of tramways already purchased. The advances are to be repaid in ten annuities, payable in half-yearly instalments, commencing six months from the date of the advance (Art. 15; and cf. No. 44 of 1902, Art. 2). The annuities are privileged claims ranking immediately after those created by Art. 2101 of the Civil Code (Art. 16). The repayment is secured by a contract charge running with the land within the meaning of English law, in lieu of an ordinary mortgage. This form of security is new to the Colony, and a carefully drafted form is scheduled to the Ordinance. If any instalment remain unpaid for ten days after it becomes due, it may be recovered by seizure and sale (i) of the crop, if cut, or (ii) of the proceeds of the crop, or (iii) of the estate and lands standing thereon (No. 34 of 1902, Art. 18). Where the last remedy is adopted, the sale is to be carried out under Ordinance No. 19 of 1868, regulating sales by forcible ejectment, except that there is no *mise-à-prix* upset price by the Government and that the sale is subject to the continuance of the contract charge. By making seizure and sale of the crop or of its proceeds the primary remedies, and seizure and sale of the estate itself only an ultimate one, the Ordinance leaves the rights of mortgagees practically unaffected, and in consequence of this security many mortgagees have, in fact, ceded priority to the Government. The applicant is bound (*a*) to lay the tramway with reasonable diligence; (*b*) to maintain it in good order; (*c*) to maintain the estate in cultivation; (*d*) not to parcel out the estate without the Governor's authority, (*e*) nor sell part of it without such authority; (*f*) to insure the tramway (Art. 19). The expert of the Loan Board is empowered to enter on an estate at any reasonable time to see that these conditions are being complied with (Art. 21). The misapplication of an advance is made an offence punishable by a maximum period of two years' imprisonment (Art. 22). Another Ordinance authorising advances to planters for general purposes owes its origin to the same difficulty in regard to animal traction—the Sugar Estates (Advances in Aid) Ordinance, 1902 (No. 43 of 1902). It is, *mutatis mutandis*, identical in structure and terms with the Mechanical Transport (Loan) Ordinance, 1902.

Post-Office.—The Post-Office (Amendment) Ordinance, 1902 (No. 26 of 1902), enables the Colonial Postmaster to inflict fines not exceeding ten days' pay on letter-carriers, travelling postmen, etc., for drunkenness, carelessness, or other misconduct, without prejudice to other proceedings before ordinary Courts of Justice. Any aggrieved party may appeal to the Governor (Art. 2). All fines imposed are paid into a "Post-Office Reward Fund," intended for the remuneration of officers and servants for "extra or specially meritorious service" (Art. 3).

Marine Court.—The Marine Court Ordinance, 1902 (No. 42 of 1902),

enacted in virtue of Art. 478 of the Merchant Shipping Act, 1894, constitutes a Marine Court for shipping enquiries. The Court consists of the Magistrate of the First Division, Port Louis, with two naval or mercantile assessors.

Law Revision.—The Law Revision Ordinance, 1902 (No. 45 of 1902) and the Law Amendment Ordinance, 1902 (No. 46 of 1902), prepared the way for the general revision of the Statute Law of the Colony, now in progress, by repealing spent enactments, replacing parts of certain enactments which have become obsolete by words in accordance with existing legislation, and by correcting typographical errors in various enactments.

Filiation of Natural Children.—The Filiation of Natural Children Ordinance, 1902 (No. 37 of 1902), puts the filiation of natural children on the same footing as the filiation of legitimate children.

I. Under the Code Civil the latter may establish paternity by what is termed *possession d'état* (Art. 320, Code Civil); *i.e.* they may prove by a variety of circumstances that they are the children of certain parents. The principal of such evidential circumstances are that the child has always borne the father's name and been treated by him and by the family and by society as the child of such parents (Art. 321). Under the Code Civil, on the other hand, the acknowledgment of a natural child, if not effected in the declaration of birth, must result from an authentic act; *i.e.* the deed of marriage of his parents posterior to his birth, or a deed of acknowledgment before a notary (Art. 334).

The Ordinance of 1902, which is based upon a *projet de revision* of the Civil Code by M. Laurent, the Belgian jurist, allows illegitimate children to establish their filiation as regards both father and mother by *possession d'état* (Art. 1), and thus to take the share in the succession which is granted to illegitimate children by Ordinance No. 21 of 1883.

II. Under the Civil Code a child, born out of wedlock, could only be legitimated by the subsequent marriage of his parents, if his filiation had been legally recognised before marriage or was so recognised in the act of marriage itself (Art. 331). Under the Ordinance of 1902 (Art. 2) the subsequent marriage of his parents legitimated the natural child, whether his "filiation is legally established before or after marriage."

III. Under the Civil Code a legitimate child who is unable to produce his act of birth or to show *possession d'état*, can prove his filiation by witnesses, provided that his claim derives initial support either from some writing or from strong presumptions arising from admitted facts (Art 323).

In the case of a child born out of wedlock a commencement of proof in writing was a *sine quâ non* to the admission of parol evidence of maternal filiation (Art. 341) [*récherche de la paternité* was forbidden]. This condition caused great hardship, as a large proportion of the mothers of natural children are illiterate, and accordingly the new Ordinance permits the natural as well as the legitimate child to have the benefit of strong presumptions

arising from established facts as a foundation for proof of maternity by witnesses (Art. 3). The Ordinance has a retrospective effect (Art. 4).

Reports.

Report of Commission of Enquiry into the Medical and Health Department, 1902-3.

Report of Commission of Enquiry on the working of the Post and Telegraph Department, 1902.

Committees.

A committee has been appointed to enquire into the law of Family Councils and to report: (1) how far it would be possible to reduce the costs in connection with the same, or to dispense with the same in certain cases; and (2) whether it would not be expedient to assimilate the law of Mauritius on the subject of guardianship of minors to the law of England.

The committee will further enquire generally into the law of successions, and report how far it would be possible to reduce the costs incident to small successions.

Another committee is investigating the law as to bills of exchange.

Consolidation of the Rules of the Supreme Court.—The Rules of the Supreme Court of Mauritius have recently been consolidated by the judges.

(I) The Rules, which range from 1852 downwards, have been rearranged in the following order: (*a*) Proceedings in an ordinary action from its commencement up to execution. (*b*) Small causes: Actions on bills of exchange: Undefended actions. (*c*) General matters such as time, service, copies, etc. (*d*) Proceedings relating to the Master and Registrar. (*e*) Sittings of Court and Cause Lists. (*f*) Barristers and Officers of Court.

(II) All existing Rules, Memoranda, and Orders are converted into Rules, to be called the R. S. C., 1903, the old Rules, Memoranda, and Orders being revoked (Schedule B).

(III) The following changes have been made: (*a*) Instead of the old English pleadings formerly in use (declaration, plea, replication), the modern English pleadings (statement of claim, statement of defence, reply) have been introduced. (*b*) New assignments have been abolished, all such matters being dealt with by way of amendment (R. 28). (*c*) Rule 6 of the old Rules of February 2nd, 1852, provides that the English law as to the articling of attornies' clerks and their admission to practice, etc., shall be followed.

Rules 171 *et seq.* expand this provision, showing the actual English practice in regard to these matters, with such verbal modifications as are necessary for its application in Mauritius, and prepare the way for a new system of instruction and examination of articled clerks.

IV. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

[*Contributed by* A. R. Butterworth, Esq.]

Acts passed—Public, 21.

Introductory Observations.—The seventeen Acts passed in 1901, together with the twenty-one Acts passed in 1902, comprise the legislative work effected during the first Session of the first Parliament of the Commonwealth. Of the twenty-one Acts of 1902, no fewer than twelve deal with Supply. Of the remaining nine, one deals with the Public Service (No. 5), two with Parliamentary Franchise (No. 8) and Elections (No. 19), two with Excise (No. 11) and Customs Tariff (No. 14), and one is a temporary measure—doubtless to be replaced by a permanent Statute—for enforcing claims against the Commonwealth (No. 21).

Public Service (No. 5).—This Act is divided into five parts—namely, I., Administration (ss. 5-14); II., Divisions of Public Service and Appointments (ss. 15-40); III., Internal Administration (ss. 41-50); IV., Life Assurance (ss. 51-58); V., Miscellaneous (ss. 59-80) (s. 4). Part I. provides for the appointment of a Commissioner and Inspectors, who are appointed for seven years, and who are only liable to be removed upon a resolution of Parliament (ss. 5, 6). No suit can be brought against the Commissioner or an Inspector for any nonfeasance or misfeasance in connection with his duties (s. 5 [5]). The duties of these officers include inspecting, examining, and reporting upon the various departments (ss. 8, 11). Part II. divides the public service into four divisions—administrative, professional, clerical, and general (s. 15); and as a general rule no person is to be admitted to the public service unless he is a natural-born or naturalised subject of His Majesty and has passed the examination prescribed (s. 26). Arrangements may be made for an officer of a State to perform duties for the Commonwealth, and *vice versa* (ss. 35-39). Part IV. provides generally that every officer must insure his life in the manner prescribed (ss. 51-58.) Part V. deals with a number of miscellaneous matters, and empowers the Governor-General to make regulations for carrying out the provisions of the Act (s. 80).

Parliamentary Franchise and Elections (Nos. 8 and 19).—The Franchise Act (No. 8) provides for the franchise for the election of future Parliaments in the following manner:—

"Subject to the disqualifications hereafter set out, all persons not under twenty-one years of age, whether male or female, married or unmarried, (*a*) who have lived in Australia for six months continuously; and (*b*) who are natural-born or naturalised subjects of the King; and (*c*) whose names

are on the electoral roll for any electoral division: shall be entitled to vote at the election of members of the Senate and the House of Representatives" (s. 3). The following are disqualified from voting: persons of unsound mind, or attainted of treason, or convicted and under sentence or subject to be sentenced for one year's imprisonment or longer, and aboriginal natives of Australia, Asia, Africa or the Islands of the Pacific, except New Zealand, unless entitled under s. 41 of the Constitution [1] (s. 4). No person shall be entitled to vote more than once at the same election. (s. 5). This Act is to be incorporated with No 19.

The Electoral Act (No. 19) is a long Act divided into seventeen parts, and contains 210 sections, with a schedule of forms; and it makes elaborate provisions for regulating Parliamentary elections. Each State is to be distributed into electoral divisions equal in number to the number of members of the House of Representatives to be chosen therein, and one member of the House of Representatives is to be chosen in each division (s. 12); and a redistribution of any State into divisions is to be made whenever directed by the Governor-General (s. 23). Voting is to be by ballot, and provisions are made for sending ballot papers by post in case of absence, illness, etc. (ss. 109-122). Electoral expenses to be incurred or authorised by a candidate are limited in elections for the Senate to £250, and for the House of Representatives to £100 (s. 169). The Act defines and punishes various electoral offences (ss. 173-191), bribery or undue influence being punishable by a penalty not exceeding £200 or one year's imprisonment, and any other illegal practice by a penalty not exceeding £100 or six months' imprisonment (s. 181).

Excise and Customs Tariff (Nos. 11 and 14).—The first of these Acts imposes specified excise duties on beer, spirits, starch, sugar, and tobacco. The latter Act imposes various import duties on a very large number of articles specified.

Royal Commissions (No. 12).—This Act provides for summoning and examining witnesses, etc., before a Royal Commission.

Post and Telegraph Rates (No. 13).—This Act, to be incorporated with the Post and Telegraph Act, 1901,[2] imposes rates for postage of newspapers and for telegrams.

Claims against the Commonwealth (No. 21).—This is a temporary Act, expiring at the end of the year 1903. It is based on similar Acts obtaining in various States for enforcing claims against the Government of the State.[3]

[1] S. 41 of the Constitution enacts that "no adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth."

[2] As to this Act, see "Review of Legislation, 1901," in this Journal, 1902, No. 2, p. 255.

[3] The first of such Acts was passed in New South Wales in 1857, and in Victoria in 1858.

A person "making any claim in contract or in tort against the Commonwealth, may set out the particulars of the claim in a petition to the Governor-General," who may appoint a nominal defendant on behalf of the Commonwealth (s. 2), against whom the petitioner may bring a "suit at law or in equity in the Supreme Court of the State in which the claim arose." The rights of the parties "shall as nearly as possible be the same, and judgment may be given and costs awarded on either side, as in an ordinary case between subject and subject" (s. 3). The nominal defendant shall not be individually liable, but damages and costs awarded to the plaintiff may be paid out of the Consolidated Revenue Fund by the Governor-General, who may perform any decree or order made (s. 5). "The Supreme Court of each State is hereby invested with federal jurisdiction for the purpose of hearing and determining actions and suits brought under this Act, and shall have that jurisdiction as a Court invested with federal jurisdiction and not otherwise" (s. 6). With respect to appeals, a special enactment is made by s. 7: "In any action or suit brought under this Act, any appeal, or application for leave to appeal, from a decision of the Supreme Court of a State, which, in the opinion of the Attorney-General, involves a constitutional question, or a question of importance to the Commonwealth, shall on the application of the Attorney-General be postponed until a time not later than the date of expiration of this Act."

2. NEW SOUTH WALES.

[*Contributed by* Edward Louis de Hart, Esq.]

Acts passed—124; of which 99 were Public and 25 Private and Special.

Consolidating Statutes.—The process of consolidating the Statute Law of New South Wales was continued in the Session of 1902. Of the ninety-nine public Acts which were passed, fifty-eight are described as consolidating Acts, and they repeal one hundred and thirty-seven older Statutes. Some of these consolidating Acts, however, only take the place of a single measure. For the Legislature of the Colony, when some provisions of a Statute have become unnecessary or have been superseded by later enactments, instead of repealing the superfluous sections, often prefer to repeal the whole measure and re-enact the provisions that remain operative in a "consolidating" Act. Thus, the Common Carriers Act, 1902 (No. 48), described as "an Act to consolidate the enactments regulating the rights and liabilities of Common Carriers by land," repeals the Common Carriers Act of 1878, and simply re-enacts all of its provisions, except one in s. 9 relating to the payment of money into court, which is omitted because it has been superseded by various other Acts. Another Act (No. 46), described as "an Act to consolidate enactments relating to dedication

by user," repeals a single-clause Act (45 Vict., No. 15), and re-enacts it with the addition of a short title.

The most important of the consolidating Statutes deal with the enactments relating to arrest on mesne process (No. 24); the control and management of the public finances (No. 25); the law relating to magistrates and justices, including the jurisdiction of Courts of Petty Sessions, the powers of police magistrates and justices, procedure, appeals from justices, and proceedings against justices (No. 27); arbitration (No. 29); public health (No. 30); the Acts relating to the Constitution, the subjects included being the powers of the Legislature, the Legislative Council and Legislative Assembly, the functions of Executive Councillors, the Consolidated Revenue Fund, and the appointment of public officers (No. 32); Parliamentary franchise and elections (No. 34); the establishment and regulation of labour settlements on Crown lands (No. 44); the rights and liabilities of common carriers (No. 48); water rights (No. 51); the enactments relating to agreements made elsewhere for personal service in New South Wales (No. 58); the enactments relating to masters and servants (No. 59); the liability of innkeepers (No. 64); the sale and use of poisons (No. 65); piracy (No. 69); the regulation of coal mines (No. 73); vagrancy (No 74); the enactments relating to nuisances from the smoke of furnaces (No. 77); and those relating to noxious trades (No. 82).

The Legitimation of Children Act (No. 23).—This Act enables the father of an illegitimate child, who has married its mother after its birth, to legitimate the child by making a statutory declaration in the prescribed form and having it registered (ss. 3, 7). A child may be thus legitimated after death, in which case its issue will take, by operation of law, all property which would have accrued to the issue if the parent had been born in wedlock (s. 4); but no interest in property to which any person has become entitled by any disposition before the passing of the Act, or by devolution of law on the death of any person before the passing of the Act, is to be affected by the Act (s. 5). It is also expressly provided that no child can be legitimated if at the time of its birth there existed any legal impediment to the intermarriage of the parents (s. 6). The benefit of the Act is extended to illegitimate children born before it was passed.

The Women's Franchise Act (No. 54).—This Act confers the right to vote at elections of members of the Legislative Assembly upon women. This it effects by declaring that the expression "male person" in the Parliamentary Electorates and Elections Act of 1893 shall be read "male or female person." The right is not to be exercised until the next general election, and it is expressly provided that women are not qualified to be nominated or elected as members. A Bill which makes provision for the registration of female electors has been reserved.

The Scaffolding and Lifts Act (No. 91).—This Act relates to scaffolding, engines, and gear used in building operations, and to lifts. Its operation is

limited to such districts as may be directed by Proclamation. No scaffolding or lift may be erected until after notice to an inspector (ss. 5, 8), and all scaffolding and engines, and the gear connected therewith, must be in accordance with the regulations in the schedules (s. 6). They are to be inspected from time to time, and the inspector may order work to cease on any of them on the ground of danger to human life or limb, or of non-compliance with the regulations (ss. 9, 10). An appeal from the order of an inspector is given to the Government Architect. Further, every driver in charge of a steam crane used in connection with building operations must have a certificate, granted by the Government Architect after enquiry and examination as to his trustworthiness and competence (s. 11). In view of the difficulties which the English Courts have had in determining the meaning of the term "scaffolding" in the Workmen's Compensation Act, the definition thereof in this Act deserves to be noticed. "Scaffolding" is defined to mean "any structure built up and fixed to a height exceeding eight feet from the horizontal base on which it is built up and fixed, for erecting, demolishing, altering, repairing, cleaning, or painting buildings and structures, and shall include any swinging stage intended to be used for any of the aforesaid purposes."

University and University Colleges Act (No. 92).—The object of this Act is to give students of training schools established under the Public Instruction Act of 1880, and other persons training for the position of teacher under the Department of Public Instruction, the privilege of attending university lectures on arts or science without paying fees.

Registration of Firms Act (No. 100).—This Act requires every firm carrying on business in New South Wales under a firm-name other than the full or usual names of the partners, and every person trading under any firm-name other than his full or usual name, to register the name under which the business is carried on (s. 4). Registration is to be effected by sending to the Registrar-General a signed and attested statement setting out (*a*) the firm-name; (*b*) the nature of the business; (*c*) the place where the business is to be carried on; (*d*) the full name, residence, and other occupation (if any) of each of the persons carrying on the business; (*e*) if the business is commenced after the Act comes into operation, the date of its commencement (ss. 5, 6). When a change takes place in the constitution or name of a registered firm, the registration must be renewed (s. 8). A penalty is imposed for default in registration without reasonable excuse (s. 10), and any person making a false return under the Act is guilty of a misdemeanour, and liable to imprisonment for a term not exceeding two years (s. 13). Any firm or person making default under this Act who brings an action shall be ordered by the Court to register the firm-name, and the Court may stay the action until the order be complied with, or allow it to be continued on an undertaking to comply with the order (s. 11). A register of the statements made under the Act, with an index of the firm-names, is to be kept, and

may be inspected; copies or extracts may be made, and enquiries by post in reference to any registration, accompanied by the prescribed fee, must be answered (ss. 16-18).

Wine Adulteration Act, 1902 (No. 107).—This Act contains very stringent provisions to prevent the adulteration of wine or the sale of adulterated wine.

Fisheries Act (No. 119).—This Act remodels the law relating to the fisheries of the Colonies. It substitutes for the Commissioners of Fisheries a Board of ten members to be called the Board of Fisheries for New South Wales. It gives the Board power to fix a close time on any tidal or inland waters, either as regards fishing generally or fishing with nets and lines; prohibits salmon or trout fishing in inland waters except by rod and line; and forbids the use of fixed engines for catching salmon or trout in any inland or tidal waters. It authorises the leasing of Crown lands for oyster culture, and enables the Board to use Crown lands for experiments in the culture and propagation of fish and oysters, and to take steps for the discovery of fishing grounds and oyster beds. It gives the Governor wide powers to make regulations dealing, *inter alia*, with the weight or dimensions of marketable fish, the mode of fishing, the user of oyster beds by the lessees, and the prevention of the destruction of fish by the pollution of waters.

3. QUEENSLAND.

[*Contributed by* W. F. Craies, Esq.]

Acts passed—Public, 28; Private, 1.

Introductory Observations.—The bulk of the legislation of 1902 seems to have been concerned with making financial ends meet during a period of drought and consequent distress and shrinkage of revenue.

The Statutes of most general importance are those consolidating the law as to local government, providing for the registration of firms, and establishing a tax on incomes.

In the drafting of Queensland Statutes there is a growing tendency to treat former Statutes dealing with important subjects as chapters in the State Code, and to draft the amending Acts from this point of view. The Land Act (No. 18) of the year contains the following clause (s. 2):—

> In all copies of the principal Act hereafter printed by the Government printer, all repeals and amendments of the provisions of the principal Act made by this Act *or by any other Act heretofore passed or hereafter to be passed*, shall be omitted and inserted, as the case may be, and reference shall be made in the margin of the principal Act to the sections of the Acts by which such repeals and amendments are respectively made.

This provision enables the official draughtsman and the Government

printer to edit up the Statutes in a manner which in less favoured parts of the Empire is left to the private enterprise of text-writers.

Appropriation.—2 Ed. VII., Nos. 2, 5, 9, 11, are Appropriation Acts.

Treasury Bills and Loans.—2 Ed. VII., No. 20, provides for the cancellation of £1,250,000 Treasury bills issued under Acts of 1893 [1] and 1895 [2] but not disposed of, and for the issue in substitution of other Treasury bills to the same amount payable on such days not later than July 1st, 1913, as may be appointed by the Governor in Council (s. 2). It also extends (s. 3) to the same limit of time the currency of £250,000 Treasury bills authorised but not issued under the Act of 1895, and authorises (s. 4) a further issue of £500,000 with the same limit of currency.

2 Ed. VII., No. 26, authorises the raising by Treasury bills of a further £600,000.

2 Ed. VII., No. 27, authorises the raising of a loan of £2,256,000 for the public service of the State by debentures or inscribed stock,[3] bearing interest at a rate not exceeding $3\frac{1}{2}$ per cent.

Civil Service: Pay.—2 Ed. VII., No. 3 (the Special Retrenchment Act of 1902) reduces from August 1st, 1903, to October 1st, 1904, the salaries of the Ministers of the Crown, the members of the Legislative Assembly, certain officers in Parliament, and of public servants generally, excluding the Governor, the Auditor-General, and the judges, and salaries not exceeding £100, and officers whose annual rate of pay had been reduced between July 1st, 1902, and August 26th, 1902. The reduction does not affect the relative position or seniority of the officer nor his scale of pension (ss. 5, 6).

Civil Service: Pensions.—2 Ed. VII., No. 22, validates retiring allowances to certain named officers whose services were dispensed with before their attaining the prescribed age.

Income Tax.—2 Ed. VII., No. 10, a Statute of eighty-six sections, imposes for the first time in the history of Queensland a tax on incomes. It differs from the Imperial Acts in several very important particulars.

All males of full age are liable to the tax, and to pay a minimum annual sum of 10*s*. Women, whether married or single, and males under age are not liable to the tax unless they have an aggregate income from personal exertions or property of at least £150. The tax is also leviable on all companies or bodies corporate, howsoever and under whatever law incorporated, and wherever their head office or principal place of business may be.

The exemptions (s. 12) include the revenues of local government authorities, mutual life assurance companies, religious, charitable, and educational institutions of a public character, and societies and institutions not carrying on business for profit or gain, friendly societies and trade unions. There are also exempted incomes derived as dividends from a company which has in Queensland paid a duty on such dividends and income arising or

[1] 56 Vict., No. 36. [2] 59 Vict., No. 33.

[3] Under the Queensland Stock Inscription Act of 1885 (47 Vict., No. 1).

accruing from debenture stock or Treasury bills issued by the Queensland Government.

The tax is levied (s. 7) in respect of the annual amount of the incomes of all taxable persons, at the rates following:—

(1) If the total income subject to the tax does not exceed £100, the fixed sum of 10*s.*[1]

(2) If the total income subject to the tax exceeds £100, but does not exceed £150, the fixed sum of £1.

(3) If the total income subject to the tax does in the aggregate exceed £150, on the first £150 of such income the fixed sum of £1 (and in estimating such £150 the income, if any, derived from the produce of property shall be first resorted to): on the balance of the total income after the first £150:—

(*a*) On all income "derived from personal exertion," at the rate of sixpence in the pound.

(*b*) On all other income "derived from the produce of property," at the rate of one shilling in the pound.

"Income derived from personal exertion" is defined (s. 3) as "all income consisting of earnings, salaries, wages, allowances, pensions, superannuation, or retiring allowances or stipends earned in or derived from Queensland: the income subject to tax includes income of the taxpayer although the same has not arisen or accrued, or been earned, derived, or received by or from his own personal exertion or business."

"Income derived from the produce of property" is defined as "all income derived in or from Queensland and not derived from personal exertion; the income subject to tax includes income of the taxpayer although the same has not been derived from his own property."

Elaborate provisions are made (ss. 14-18) as to deductions, as to the valuation and taxation of quarters and allowances to employees, and of profits converted into stock-in-trade or used as capital (ss. 19-20).

Provision is made for constituting certain persons as responsible agents for persons absent from the Colony or for their employees, or for taxable companies. Particular attention is paid to the assessment of foreign companies and shipowners (ss. 31-33). The original Act proposed to treat the income of companies as derived from the produce of property and not from personal earnings, but this provision was repealed by a later Act of the Session (No. 23). The machinery created for assessment and collection is in the main an adaptation of the Imperial Acts.

Gaming Machines.—2 Ed. VII., No. 4, increases from 6*d.*[2] to 1*s.* the

[1] The idea of the fixed tax seems to have been taken from the fixed death duty imposed on small estates under the Finance Act, 1894. It will work as a poll tax on the labouring classes.

[2] The use of these machines is allowed under an Act of 1889 (53 Vict., No. 2), and the tax of 6*d.* was imposed by an Act of 1892 (56 Vict., No. 15).

tax levied on totalisator machines, which are only allowed to be used on racecourses. The impost is levied on every 20*s.* received or paid by the conductor of the machine.

Aborigines' Protection.—2 Ed. VII., No. 1, passed in 1901, but reserved and assented to by Order in Council of March 6th, 1902,[1] amends legislation of 1897 [2] on the same subject, and the Native Labourers' Protection Act, 1884 (48 Vict., No. 20).

The provisions of the Act are intended to give proper control over the employment and payment of aboriginals, the protection of their women and girls, improvement in the position of half-castes, including liability of white fathers to contribute to the maintenance of their half-caste children who have become chargeable to the State. The reserves set apart for aborigines are protected from mining operations; and, *per contra*, the camps of aborigines (which have all the defects of gipsy encampments) may be removed from any neighbourhood if it be thought necessary.

Defence.—2 Ed. VII., No. 16, amends the Defence Act of 1884 [3] as to exemption from ferry tolls and free conveyance by railway of persons in the defence force who are in uniform for duty.

Dentists.—2 Ed. VII., No. 25, makes provisions for the registration of dentists qualified to practise in Queensland. It constitutes a Dental Board of seven members, at least two of whom must be medical practitioners and the rest dentists. The board is to examine, register, and control persons qualified to practise as dentists. The scheme of the Act is in the main that of the Imperial Dentists Act, 1878 (41 & 42 Vict., c. 43).

Fire Brigades.—2 Ed. VII., No. 21, amends the legislation of the State as to fire brigades [4] in certain details which seem to be mainly if not wholly consequential on the consolidation of the law as to local government.[5]

Land.—2 Ed. VII., No. 18, an Act of fifty-seven sections, amends the principal Land Act of the State passed in 1897,[6] treating it as the Land Code of the State. The amendments are too special in character and too local in interest to warrant presentation in detail. They are mainly concerned with new pastoral leases and selections for agricultural purposes.

Local Government.—2 Ed. VII., No. 19, an Act of 399 sections and four schedules, repeals wholly or in part thirty-seven prior Acts, and consolidates and amends the law relating to local authorities, omitting that relating to public health, which was consolidated in 1900.[7]

Part II. deals with the areas of local government, towns, and shires.

Part III. deals with the constitution of local authorities—in towns, a council of from six to twelve elected aldermen presided over by a mayor

[1] Stat. R. & O. (1902); assent proclaimed May 3rd, 1902.
[2] 61 Vict., No. 17. Journal, 1898, p. 103.
[3] 48 Vict., No. 27.
[4] Contained in Statutes of 1881 (45 Vict., No 10) and 1882 (46 Vict., No. 9).
[5] *Infra.* [6] Journal, 1898, p. 105. [7] Journal, 1901, p. 354.

elected from among themselves; in shires, a council of from five to nine elected councillors, who choose a chairman from among themselves—the qualification of members and voters, retirements and vacancies, and *ouster* from office.

Part IV. deals with the election of members of the councils and with the election and duties of the chairman, who may receive an allowance from the Local Fund.

Part VI. regulates the proceedings of the councils.

Part VII. deals with the powers and duties of the councils, which correspond closely to those of local authorities at home, but include authority to make and enforce by-laws under sixty-seven distinct heads, from advertising to wharves. The by-laws must be submitted to the Governor in Council, and do not come into force till approved and gazetted.

Part VIII. deals with buildings. The towns may be divided into first-class or "fireproof" sections and second-class sections, in which fire-resisting materials are not insisted on. Most of the building regulations, however, will depend on by-laws.

Part IX. treats of by-laws, their subject-matter and procedure for making and enforcing them.

Part X. creates a local fund to be fed by rates and other receipts from local resources and State grants.

Part XI. deals with valuation for rating. It declares what land is ratable, and prescribes the mode of valuation, based, as a general rule, not on annual value, but on estimated selling price (s. 195).

The lands exempted include Crown lands which are unoccupied or are used for public purposes; lands in the occupation of the Crown unless rented in a town from any person or corporation; land in the occupation of any person or corporation which is used for public purposes; land vested in or in the occupation of or held in trust for a local authority; common land not exceeding fifty acres and used exclusively for public worship, or for public worship and educational purposes, or for an orphanage or mechanics' institute, school of arts, technical school or college, school of mines, public school, or library; and land used exclusively for cemeteries.

Part XII. deals with rating powers. Where the rates are not paid the authority can distrain or take the timber, or in certain cases seize and sell the land. The liability for rates is on the owner of the land.

Part XIII. treats of accounts and of audit, which is by a public official appointed by the Governor.

Part XIV. regulates loans. A plebiscite may be demanded before a loan can be authorised.

Part XV. deals with the creation of tramway areas and the provision of tramways by a local authority alone or conjointly with other.

Part XVI. deals with agricultural drainage.

Part XVII. deals with the constitution of joint authorities where required.

Mines.—2 Ed. VII., No. 24, amends the Mines Act of 1898,[1] with the object of better facilitating the drainage of mines subject to inundation by the percolation of water accumulated underground or from other sources.

Port of Brisbane.—2 Ed. VII., No. 13, validates the construction of certain training walls and other works by the Harbours and Rivers Department for the benefit of the navigation of the River Brisbane, the legality of which had been questioned; and provides for compensation for interference, by the works, with the access to land of riparian owners.

Registration of Firms.—2 Ed. VII., No 12, provides for the registration of firms—*i.e.*, of any person individually, or any two or more persons, in association or partnership, carrying on any business or having a place of business in Queensland under any firm name—*i.e.*, a name not consisting solely of the full or usual name or names of the individual or *all* the partners or associates. It does not apply to companies registered under the Companies Acts or incorporated by any Statute of the Colony, nor to foreign companies registered under the Colonial Act of 1895.[2]

Friendly Societies.—2 Ed. VII., No. 15, amends the Friendly Societies Act of 1894 (58 Vict., No. 17) as to the opening and use of special banking accounts by the trustees of a friendly society.

Railways.—2 Ed. VII., No. 8, provides for the appointment of a Commissioner of Railways by commission under the Great Seal of the State for a term not exceeding seven years; puts under his control all moneys appropriated for the maintenance of existing and the construction of new railways; authorises him to make, and to compound for the breach of, contracts. It also limits the damages recoverable against the Commissioner in respect of personal injury and for damage to animals, or passengers' luggage, unless the value of the animals or luggage has been declared to exceed the prescribed limit of damage, and the excess insured at a scale limited by the Act, before consignment of the animals or the entry by the passenger on his journey.

Trustees and Executors.—2 Ed. VII., No. 7, amends the Trustees and Executors Act, 1897,[3] by empowering trustees with the sanction of the Court to postpone the sale or conversion of property held in trust for an infant (solely or jointly with others) and to manage the property or carry on any business connected therewith for such period during the minority of the infant as the Court may think to be for the benefit of the persons entitled. The Court may allow the trustee salary or remuneration for his pains and trouble. The provisions of the Act may be excluded by the terms of the instrument creating the trust.

Four of the public Acts are of a local character:—

2 Ed. VII., No. 6, authorises certain undertakers to test, open up, and

[1] 62 Vict., No. 24. Journal, N.S., 1899, p. 481.

[2] Similar legislation was passed in Western Australia in 1897. Journal, 1898, p. 108.

[3] 61 Vict., No. 10, Journal, 1898. p. 481.

develop at deep levels certain auriferous land in the goldfield of Gympie, obliging them to deposit £5,000 with the Secretary for Mines, and within four years to sink a shaft not less than 4,000 ft. deep.

2 Ed. VII., No. 14, amends the Brisbane Water Supply Act of 1889 (53 Vict., No. 9).

2 Ed. VII., No. 17, amends the Gladstone to Callide Railway Act of 1900 by extending the time for completion, allowing deviations in the route, grade, and curves, and by providing as to wharfage at the terminal port.

2 Ed. VII., No. 28, provides for the enlargement of the City of Brisbane by uniting with it the Division of Booroodabin, and for future union with the city of other contiguous areas.

There is one private act, to reduce the liability on the shares of the South Brisbane Gas Company, and to classify such shares.

4. TASMANIA.

[*Contributed by* J. W. Fearnsides, Esq.]

Acts passed—Public, 32; Private, 20.

Appropriation Acts.—Nos. 4, 41, and 42.

Legal Practitioners (No. 10).—Any person who is a barrister or solicitor of any other State of the Commonwealth of Australia may be admitted to practise in Tasmania, subject to certain conditions enumerated in the Act, one of which is that it shall apply only when a similar Act has been passed by a sister State to barristers or solicitors of that State, and shall be in force only so long as such similar Act shall remain unrepealed.

Inspection of Machinery Act.—No. 11 is a consolidating and amending Act, which deals with machinery generally, and has special provisions concerning steam-boilers. The appointment of a Chief Inspector and one or more Assistant Inspectors of Machinery is prescribed, who are to keep full records of all their proceedings under this Act, and to report them to the Chief Secretary of the State.

Persons owning machinery of not less than one horse-power are to give notice thereof to an Inspector.

Persons under fourteen years are not to be employed about any machinery, nor in certain cases are persons under twenty-one years. No persons are to work among any self-acting machinery in motion.

Certificates of competency to manage machinery are to be granted by the Chief Inspector to every person who has satisfied him upon examination of his competency.

Certificates of competency may be withdrawn from an engineer or engine-driver by the Chief Inspector, and an appeal is given from his decision to

a Court of Enquiry composed of a police magistrate and two technical assessors.

Wide powers of controlling the use of machinery are given to the Inspectors, including the fencing of dangerous machinery. It is the duty of the Chief Secretary to provide the Inspectors with proper standards for testing steam-boilers. Upon his first inspection of any boiler the Inspector shall make and keep a record of all particulars of such boiler, and upon subsequent inspections he shall record any alterations which have taken place in such particulars since the last previous inspection. Once in each year the Chief Inspector shall furnish to the Chief Secretary a return of all boilers inspected during that year.

If to any Inspector it appear that any boiler is unsafe, he may require the owner to cease to use it, wholly or partially.

The owner of any machinery or boiler is entitled to a certificate that it has been inspected.

Notice of any accident where loss of life or bodily injury has been caused must be sent to the Inspector by the owner of the machinery or boiler affected.

The justices imposing any penalty under the Act may allow a certain proportion to any person bodily injured by reason of the default giving rise to the penalty.

The Act does not apply to engines, boilers, or machinery on railways under the State control.

Methodist Church of Australasia.—No. 18 is an Act to confirm the union in Tasmania of the Wesleyan Methodist Church, the Primitive Methodist Church, and the United Methodist Free Churches, to deal with their property in Tasmania and to regulate the trusts thereof, and to vest that property in the United Church, the Methodist Church of Australasia.

Game.—No. 21, among other provisions, forbids the hunting of the opossum for two years.

Income Tax Act.—No. 29 is an Act authorising the assessment and taxation of income in the State. For the purpose of administration the Governor may appoint a Commissioner, District Commissioners, and other officers deemed necessary, each of whom shall take an oath of secrecy.

The income of every company carrying on business in the State, and the income of every person which arises or is received in or derived from the State, are liable to taxation. Every mining company incorporated outside the State, and which carries on its operations within the State is to be deemed to have its chief place of business in the State. Certain incomes are exempt from taxation under the Act, among which are the revenues of municipalities and local bodies receiving revenue for the purpose of local self-government, income arising from stock issued by the State but redeemable elsewhere, and the incomes of private persons (not companies) not exceeding from all sources £100 per annum.

The rates of taxation are: for companies, one shilling in the pound; for private persons, one shilling in the pound on incomes derived from property; sixpence in the pound on incomes derived from business.

Companies must not distribute their dividends before paying the tax. There are elaborate provisions for the ascertainment of the amount subject to tax, being principally concerned with companies whose chief place of business is not in the State, and with the incomes of persons temporarily or permanently residing outside it.

There are deductions allowed in the case of incomes of persons which are above £100 and do not exceed £400 a year. In calculating the actual income basis, deductions of various kinds are recognised—*e.g.*, rent of land or buildings used solely for trade purposes, sums expended for the supply or repair of apparatus used solely for business purposes.

The tax is to be deemed to be a debt due to the Crown. Every company liable to taxation under this Act shall be represented by a person resident in Tasmania, and stringent rules are laid down for the appointment of this officer, who is made responsible for the correct return of his company. Full provision is made by the Act for assessment. An objection by any private person or company to an assessment is considered by the Commissioner, and if not allowed by him goes for review before a judge of the Supreme Court.

Licensing Act.—No. 32, a consolidation and emendation of the law upon this subject, is of interest as including a scheme of local option among its provisions.

Licensing Benches are authorised for Districts of which Hobart and Launceston are the respective centres, composed in the former case of nine members, in the latter of seven. Of these, seven and five members respectively are justices to be elected by the General Sessions Court of each District, the two remaining members in each case being the Mayor and Police Magistrate.

The Governor has power to proclaim other Licensing Districts, each composed of five members, one nominated by the Governor, the others elected as in the two Districts created under the Act.

Every Licensing Bench is given the powers of a Court of General Sessions as to compelling the attendance and examination of witnesses and the punishment of contempts. No hotel or public-house licence can be granted unless certain conditions as to number of rooms and space are complied with, nor unless the Bench are satisfied that the sanitary condition of the house is satisfactory and that the fire appliances are adequate. No married woman can hold any kind of licence save in a few excepted cases.

The ratepayers of a District residing within a certain distance of a proposed licensed house may object to the granting of such a licence by presenting a petition to the Bench. If the objection is against a house which has not been licensed during the preceding year, and in respect of which

the application is for a provisional licence, then the Bench must refuse the licence; but if the house has been licensed during the preceding year, then the Bench must enquire into the truth of the allegations in the petition and decide upon the opinion they form in the result. Ratepayers may appear in support of the petition, and there is machinery provided for taking a poll. The Bench is given full power to award costs of proceedings.

An appeal lies from a Licensing Bench to the Supreme Court. Clubs are to be registered, and the supply of liquor to drunkards is forbidden.

A penalty is prescribed for any holder of an hotel licence or of a public-house licence in the country who has refused, without good cause, to receive and provide for a traveller. There are penalties also for selling unwholesome liquor.

Baptist Union of Tasmania.—No. 48 deals with the property of this religious body, and power is taken to federate with Baptist Unions in the other States.

5. VICTORIA.

[*Contributed by* H. E. Gurner, Esq.]

Acts passed—8 (Nos. 1782 to 1789 inclusive).

There seems this year to have been the minimum amount of legislation in this Colony, and what there is is also singularly devoid of interest. Three of the Acts deal with the Consolidated Revenue, and one other with the deposit receipts of a municipality.

Corporations as Joint Tenants.—The Bodies Corporate (Joint Tenancy) Act of 1902 (No. 1784) gives power to corporations to hold property as joint tenants with the proviso that they shall be liable to the same conditions and restrictions as attach to the acquisition and holding of property by a body corporate in severalty.

S. 2 provides that when a corporate body is a joint tenant of any property, on its dissolution this property shall devolve on the other joint tenant.

6. WESTERN AUSTRALIA.

[*Contributed by* R. W. Lee, Esq.]

Acts passed—49.

Supply.—Nos. 1, 6, 12, and 49.

Public Notaries (No. 8).—Established public notaries are confirmed in their office, but must register within twelve months of the commencement of the Act (s. 4). Any future notary must be either (*a*) a practitioner of the Court of three years' standing; or (*b*) a practitioner of the Court who has practised for seven years as a public notary in some part of His Majesty's

dominions (s. 5). Other sections relate to application for admission, enrolment, etc.

Marine Stores.—No. 9 provides for the licensing of collectors of and dealers in marine stores.

Indecent Publications (No. 14).—An Act to suppress indecent and obscene publications. Works of recognised literary merit and *bona fide* medical treatises are excepted.

Public Service.—No. 16 amends the Public Service Act, 1900. Nothing in the principal Act as from the commencement thereof shall be construed or held to abrogate or restrict the right or power of the Crown to dispense with the services of any person employed in the public service (s. 14).

Fremantle Harbour Trust.—No. 17 constitutes the Fremantle Harbour Trust Commission, regulates the appointment of Commissioners, and defines their powers.

Mining Development (No. 20).—"Pioneer mining" means carrying on mining operations at places where the expenditure of large sums of money extending over a considerable period of time will be necessary to test or develop the mine (s. 3). Any person or company may apply to the Minister for an advance by way of loan for carrying on pioneer mining. All moneys advanced shall be provided out of moneys authorised by Parliament to be applied for such purpose (ss. 4 and 5). The sum advanced is not to exceed £1,000, and the borrower is to spend pound for pound out of his own capital. The loan is to bear interest at 5 per cent., and is to be secured by a first mortgage of the mine (ss. 8 and 9).

Part III. contains provisions for advances to miners for prospecting.

Parts IV., V., and VI. authorise the Minister to purchase and erect plant for crushing, etc., to pay for boring, and purchase drills.

Droving.—No. 30 repeals the Droving Act, 1894, and regulates the droving of travelling stock—*i.e.*, stock taken or driven to any place more than forty miles from their run of origin. The owner or person in charge must have about him a way-bill or delivery-note producible on demand to any proper authority. A duplicate of such document is to be posted to the Chief Inspector of Stock.

Police.—No. 31 amends the Police Act, 1892. Any person charged with having (*a*) on his person or on any animal or in any cart or other vehicle, or (*b*) in his possession on any premises of which he is the tenant or occupier, or reputed tenant or occupier, any gold reasonably suspected of being stolen or unlawfully obtained, must prove his innocence or incur a penalty not exceeding £50 or six months' imprisonment.

Other provisions relate to disorderly houses, Sunday entertainments, etc.

Dividend Duties.—No. 32 imposes duties in respect of dividends or profits of incorporated companies. A company includes every incorporated company or association (wheresoever and howsoever incorporated) which carries on business in Western Australia; but does not include—

(*a*) A registered friendly society;
(*b*) A life insurance company; or
(*c*) Any brewery or other company paying duties of excise.

Every person employed in the execution of the Act is to take an oath of fidelity and secrecy (s. 4). Within seven days from any declaration of dividend by a company carrying on business in Western Australia *and not* elsewhere the company is to make the prescribed return, and pay a duty of 5 per cent. upon the amount or value of the dividend. If the Minister is dissatisfied with the declared value, he may assess (s. 6).

Companies carrying on business in Western Australia *and* elsewhere are on or before April 1st in each year to make a return of local profits made during the year ending on December 31st last preceding. The Minister shall assess the local profits and the company pay a duty of 5 per cent. (s. 7). Insurance (other than life insurance) companies pay a duty of 1 per cent. on their gross premiums (s. 8).

A company dissatisfied with any assessment may after payment of duty appeal to the Supreme Court (s. 27).

Goldfields Water Supply.—No. 33 constitutes a Goldfields Water Supply Board, and defines its powers and duties.

The Rabbit Pest (No. 34).—The Governor may appoint a chief inspector and other officers for the purposes of the Act (s. 6). The Minister may, out of moneys voted by Parliament for the purpose, erect and maintain fences on any Crown land or private land to protect any part of the State from the incursion of rabbits (s. 9).

Any occupier or owner of land may apply to the Minister for rabbit-proof fencing to enclose his land. The cost is to be secured by mortgage of the land to be enclosed, repayable by equal annual instalments extending over a period not exceeding twenty years, and bearing interest at 4 per cent. per annum (ss. 20 and 21). Adjoining owners may be required to contribute to the annual payments (s. 26). When a rabbit-proof fence has been *bona fide* erected as such by an owner or occupier of land, whether before or after the commencement of the Act, he is entitled to recover from adjoining owners half of the cost of construction and maintenance of so much of the fence as is on the common boundary (ss. 16 and 17).

It is the duty of the owners and occupiers of land to destroy rabbits (s. 27). Notice of the presence of vermin is to be given to the chief inspector. Any animal, bird, or reptile declared by notice in the *Gazette* to be a "natural enemy" of the rabbit is protected (s. 34). The inspector may require rabbits to be destroyed, and in default enter to destroy them (ss. 30 and 31). No person is to pay or offer a reward for the destruction of rabbits (s. 42), nor in any part of the State west of the barrier fence without licence sell a dead nor anywhere keep a live rabbit except in a safe enclosure by the Minister's written permission. Penalties not exceeding £50 and £100 for each offence (ss. 41 and 43).

Supreme Court Salaries.—No. 37 determines the salaries of the judges of the Supreme Court—viz., Chief Justice, £2,000; three puisnes, £1,700 each.

Consolidating and Amending Acts.—No. 11: Justices Act; relates to justices of the peace, their powers and authorities.

No. 47: Public Works Act; deals with such topics as taking lands for public works, compensation, surveys; roads, rivers, and bridges; railways.

No. 48: Road Boards Act.

Other Amending Acts.—No. 2 amends the Explosives Act, 1895; No. 4 the Railway and Theatre Refreshment Rooms Licensing Act, 1895; No. 10, the Transfer of Land Act, 1893; No. 13, the Agricultural Bank Act, 1894; Nos. 15 and 39, the Municipal Institutions Act, 1900; No. 18, the Local Inscribed Stock Act, 1897; No. 19, the Companies Act, 1893; No. 21, the Stamp Act, 1882; No. 22, the P.O. Savings Bank Act, 1893; No. 29, the Criminal Code (No. 14 of 1901); No. 35, the Railways Acts; No. 36 the Health Act, 1898; No. 42, the Cemeteries Act, 1897; No. 43, the Fisheries Act, 1899; No. 44, the Wines, Beer, and Spirit Sale Act, 1880.

7. BRITISH NEW GUINEA.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—8.

Customs.—No. 1 amends the Customs Ordinance of 1889 as to the duty on tobacco, now 1*s.* 6*d.* per lb.

Probates.—No. 2 provides for the recognition of probates and letters of administration granted in other parts of the King's dominions.

Appropriation.—Nos. 3 and 4 are Appropriation Ordinances.

Crown Suits.—No. 5 amends the adopted Crown Remedies Act of 1894 (Queensland) as to the recovery of Crown debts.

Oaths.—No. 6 permits a solemn affirmation to be made when it is impracticable to swear a witness in the form and manner required by his religion to make the oath binding.

Criminal Law.—No. 7 adopts as the law of the Colony the Criminal Code of Queensland[1] as amended by the Queensland Act, 64 Vict., No. 7,[2] with the necessary substitutions of references to the "Possession" for references to that State.

Wreck.—No. 8 deals with wreck and salvage, and is an adaptation to the needs of the Possession of Part IX. of the Imperial Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

Letters patent[3] under the Great Seal, dated March 18th, 1902, were

[1] Journal, N.S., 1900, p. 555. [2] *Ibid.* 1901, p. 351.
[3] Printed in Stat. R. & O., 1902, at p. 594.

issued to provide for the transfer of the Possession to the control of the Federal Legislature of Australia. The transfer is to take effect on the proclamation by the Governor-General of Australia that the Commonwealth Parliament has made laws for the Possession. After the date of the Proclamation the letters patent of June 8th, 1888,[1] will cease to have effect, and the Possession will be governed as a territory of Australia. A Bill was introduced into the Federal Parliament to deal with the Possession under the name of Papua, but failed to pass.

8. FIJI.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—4.

Disaffection.—The Ordinance No. 2 of 1901 [2] not sanctioned in that year has been disallowed in 1903.

Finance.—Nos. 1 and 3 are Appropriation Ordinances.

Flogging.—No. 4 authorises the punishment by flogging of persons convicted before the Supreme Court of certain crimes *contre les mœurs* or against Part I. of the Criminal Law and Procedure Ordinance, No. 13 of 1889 (which deals with offences against women and girls). The punishment may be imposed in addition to, or in substitution for, penal servitude or imprisonment. The number of strokes, not exceeding twenty-four, is to be specified in the sentence. The instrument to be used is a cane or switch in the case of prisoners under sixteen, and in other cases a cat-of-nine-tails.[3]

Volunteers.—No. 2 amends the Volunteer Ordinance of 1898 [4] as to the officers of the force, and as to the occasions on which it may be called out to repel invasion or suppress civil disturbance.

9. NEW ZEALAND.

[*Contributed by* Godfrey R. Benson, Esq.]

Public Acts, 62; Local and Personal Acts, 30; Private Act deemed to be a Public Act, 1.

Supply.—Nos. 1, 2, and 4 are Supply Acts.

Aid to Public Works and Land Settlement (No. 3).—This Act authorises the borrowing of £1,750,000 for new railway construction, the opening up of lands for settlement, the development of the gold fields, and telegraph construction.

[1] Printed in Stat. R. & O. Revised, vol i. p. 474.
[2] Journal N.S., 1902, p. 290.
[3] This Ordinance is modified by Ordinance No. 2 of 1903.
[4] No. 10 of 1898. Journal, 1899, p. 518.

East Coast Native Trust Lands (No. 5).—The Bank of New Zealand being mortgagee of certain lands held upon trust for native owners, and having advertised certain of them for sale, this Act postpones the operation of the power of sale for two years, and appoints a special board for the purpose of making arrangements for the redemption of the mortgages and of otherwise managing the said lands.

Statutes Repeal (No. 6).—This Act repeals a number of obsolete enactments.

Local Authorities' Indemnity (No. 7).—This Act authorises retrospectively the expenditure of local authorities in celebration of the Coronation.

State Coal Mines Amendment (No. 8).—This Act amends in minute particulars the financial provisions of the State Coal Mines Act, 1901.

Fisheries Encouragement (No. 9).—This is a now annual Act continuing the bounty upon canned and cured fish for export, which was originally granted in 1885 for seven years.

Statutes Compilation (No. 10).—Upon resolutions for the purpose being passed by both Houses, the Solicitor-General is to prepare a compilation of any amended Act with the Acts amending it. Such compilation may then be submitted to Parliament for enactment without its being competent to amend it.

Unclaimed Moneys Act Amendment (No. 11).—This Act remedies a defect (or supposed defect) in the drafting of an Act of 1898 which provides for the payment to Government of dividends and other sums due from companies to persons whom after the lapse of years it is impossible to find.

Stamp Act Amendment (No. 12).—This Act (*inter alia*) requires the execution both by buyer and seller of stamped contract notes upon every sale of shares in a mining company, and no transfer may take place unless such duly stamped notes have been given (the stamp duty is 1*s.* to 2*s.* 6*d.*). It also imposes stamp duty of 1*s.* on every written guarantee to answer for the debt or default of another.

Manual and Technical Instruction (No. 13).—The Act of the same name of 1900 is hereby amended in minute particulars.

Motor-Cars Regulation (No. 14).—In the autumn of 1898 one William McLean, who had arranged for the introduction of motor-cars into New Zealand, obtained a private Act authorising and regulating their use, which would otherwise have been of doubtful legality. The present Act, which repeals the Act of 1898, empowers local authorities with the consent of the Colonial Secretary to make by-laws restricting the use of motors on particular roads and bridges and regulating the keeping and use of petroleum, etc. It requires the use of a bell or the like, and, at night, of a light, and forbids motor-drivers to travel "at a greater rate of speed than is reasonable." It also requires that motor-cars, like other machinery, shall be annually inspected. There is no fixed speed-limit. There is no provision for registration of

cars, for the carrying of marks for identification, or (in the case of private cars) for the licensing of drivers.

Opium Prohibition (No. 15).—This Act amends the Act of 1901 by making the possession of prohibited opium, as well as its actual importation, an offence, providing for the confiscation of opium unlawfully possessed, and increasing the penalty for importing opium for smoking from £100 to £500.

New Zealand University Act Amendment (No. 16).—This Act amends the constitution of the Senate and Convocation of the University of New Zealand with a view to connecting the University more closely with the affiliated institutions.

Land Transfer Amendment (No. 17).—This Act does away with the statutory form of mortgage provided by the Land Transfer Act, 1885, for lands registered under it, and substitute for mortgages of such lands a form substantially the same as that provided by the Mortgages of Land Act, 1901.

Land and Deeds Registration Districts (No. 18).—The boundaries of districts for the purpose of the Deeds Registration Act, 1888, and the Land Transfer Act, 1885, having been from time to time altered, and it being impracticable to effect a corresponding removal of the original registers from one district to another, this Act meets the consequent difficulty by providing that a copy of any original register may, with the consent of the registrar, have the effect of the original.

Fisheries Conservation Act Amendment (No. 19).—This Act gives the Government powers to undertake fish breeding. It prohibits the sale or letting of fishing rights by any person. It secures to every occupier of land the right of free fishing on his land. It extends the drastic powers of the Governor in Council for the protection of fish to all waters not wholly enclosed by the land of a private owner.

Old Age Pensions Amendment (No. 20).—The most interesting provision of this Act permits a person who would otherwise be entitled to a pension, and who resides on a small property of his own, to transfer the same to the Public Trustee. The value of the land will then not be reckoned against him in computing the amount of pension to which he is entitled; and he may live on the land rent free, but paying for repairs and all assessments. At his death the land will be sold and the proceeds will be applied first to reimburse the State for the addition to the owner's pension resulting from this provision, the balance going to the owner's representatives.

Electoral (No. 21).—This Act consolidates the law relating to the constitution and election of the House of Representations. In New Zealand, as is well known, women (including Maori women) have the suffrage, but have not the right to be elected to Parliament; the principle called "one man one vote" is followed; and provision is made for the more rapid registration of voters than in this country, for the easy transference of voters from the register of one district to that of another, and (under another Act) for the

payment of members. Moreover, the House contains four representatives elected in a special manner, which involves open voting, by the Maoris (including persons of mixed race who are more than half Maori). Few other divergences between English and New Zealand law need be mentioned, but a redistribution of seats is effected by standing commissions after each census; persons who are (except as members of companies) Government contractors are ineligible to the House, but if previously elected are not extruded; and, by an enviable provision, a candidate's expenses must never exceed £200.

Mining Act Amendment (No. 22).—Among the provisions of this Act we may notice the extension of the Act of 1899 to timber-cutting and saw-mills.

Secondhand Dealers (No. 23).—This Act prohibits the sale at shops or stores, etc., of secondhand articles except by persons licensed for the year as secondhand dealers by the local authority upon the (annual) recommendation of the police. Such persons must conspicuously advertise themselves as secondhand dealers, and they must keep a register of all their purchases, showing from whom they bought each article.

Sharebrokers (No. 24).—Under this Act every sharebroker must obtain an annual licence from the Commissioner of Stamps, who is to satisfy himself as to the applicant's character, and who may cancel a licence when it is proved to him that the licensee has within three years been guilty of "dishonest, dishonourable, or improper practices." A Stock Exchange or association of sharebrokers also requires a licence, which will not be given unless its rules are approved by the Governor in Council.

Birds Nuisance (No. 25).—This Act makes it the duty of local authorities to take effective action for the destruction of birds gazetted by the Government as injurious, provision being made for action concerted among such authorities. In case of default, an inspector, appointed by the Minister for Agriculture, is to do the local authority's work at that authority's expense, and the judge of such default is the Minister.

Nelson Harbour Board Amendment.—No. 26.

Savings Bank Profits Amendment (No. 27).—Within the province of Otago the profits of savings banks are hereby authorised to be applied to educational institutions, including the University of Otago. In the case of the University this provision is retrospective.

Law Societies (No. 28).—This is an Act to remove doubts as to the validity of the constitution of the New Zealand Law Society and of certain district societies.

Post and Telegraph Department (No. 29).—This is an Act to raise salaries.

Land Tax and Income Tax (No. 30).—This Act, which in other respects continues the previous rate of taxation, diminishes the taxation on mortgages of land from a penny in the pound of capital value to three farthings. This

change is perhaps made because the mode of assessment of mortgages for land tax was felt to be inequitable in comparison with that of land.

Kauri-Gum Industry Amendment (No. 31).—This Act deals with licences for digging gum in the State forests.

Local Bodies' Loans Amendment (No. 32).—This Act (*inter alia*) requires that a special rate made as security for a loan for improvements under the principal Act of 1901 shall be calculated as to yield, if necessary, 10 per cent. more than the charges in respect of the loan.

Pacific Cable Extension (No. 33).—This Act authorises contribution to the cost of any extension or deviation of the Pacific cable (authorised by Act of 1899) which may be approved by a resolution of both Houses.

Cook and other Islands Government Act Amendment (No. 34).—Among other amendments to the Act of 1901, this Act recognises the separate Native Council which already existed in Niue Island. It also empowers the Governor in Council to prohibit the importation from the Cook Islands to New Zealand of any plant, fruit, or other thing likely to introduce insect pests, or disease.

Australian Naval Defence (No. 35).—A contribution, to be settled with the Australian Colonies, towards an Imperial naval force for protecting shipping in Australasian waters, having been authorised for ten years by an Act of 1887, the present Act continues in perpetuity the authorisation of that contribution, as from the expiring of the previous Act.

West Coast Settlement Reserves Act Amendment (No. 36).—Different native reserves being subject to the provisions of two different Acts, passed respectively in 1856 and in 1892, the present Act is for the purpose of bringing them under the same administration.

Land Titles Protection (No. 37).—The preamble to this Act recites that of late natives have called in question in the Courts after the lapse of at least thirty years instruments of title issued under the Native Lands Act, 1865; that their actions have been dismissed; but that in such cases, owing to death, evidence is hard to procure, and alarm is thereby occasioned among Europeans. It is accordingly enacted that the consent of the Governor in Council shall be requisite for the bringing of such actions in future.

Bank Holidays (No. 38).—This Act increases the number of bank holidays from twelve to thirteen.

Court-house Sites Exchange.—No. 39.

Solicitors' Bills of Costs (No. 40).—Solicitors' bills of costs could formerly be referred by a judge to a registrar of the Court for taxation. By this Act they may be referred by the party chargeable, without the intervention of the judge, to a registrar or to a stipendiary magistrate.

Licensing Committees and Polls (No. 41).—This Act provides (*inter alia*) for a recount when the result of any licensing poll is disputed. The polls referred to are: first, a triennial poll on the questions whether licences shall

continue as at present, or be reduced or cease altogether; and secondly a poll to be taken, when the census shows decided increase of population, as to whether more licences should be granted.

Inspection of Machinery (No. 42).—This is a consolidating and amending Act. The machinery to which the Act applies is defined so as apparently to include all machinery whatever which is driven by any power other than hand or animal power; and the Governor may extend the scope of the Act, but not so as to include machinery driven by hand power. The machinery so included and all boilers are subject to inspection by inspectors, whose power of making any requirements for safety that they think fit is unlimited. No person may use any machinery or boiler without a certificate from an inspector, which certificate is (except for agricultural machinery) good for one year only. Strict requirements are laid down by the Act as to the examination and certification by a Board of Examiners of all persons who are allowed to be in charge of engines and machinery of various kinds.

Accident Insurance Companies (No. 43).—This Act requires every company which insures against accidents to render every year to Government a statement of the business it has transacted and a balance sheet.

Victoria College Sale.—No. 44.

Government Railways Superannuation Fund (No. 45).—This Act requires future employees of Government railways, and permits present employees, to contribute to a superannuation fund sums ranging from 3 per cent. of their wages, if their age at the commencement is under thirty, to 10 per cent., if their age at the commencement is over fifty. Employees over sixty who have served forty years may retire upon an allowance varying with their length of service and their rate of pay at retirement. Persons with less length of service may in special cases receive an allowance. Contributors medically unfit for duty are also to participate in the fund. When contributors retire or are dismissed or die before becoming entitled to an allowance, they or their representatives receive back what they have actually contributed without interest. When a man drawing an annual allowance from the fund dies before receiving the full benefit of his contributions, his widow or children are entitled to the difference. The fund is administered by a Board on which employees are represented. The Government guarantees the fund against any deficiency.

Poisons Importation and Carriage Amendment (No. 46).—This Act is to provide for the importation of sheep-dip containing arsenic.

Inebriates' Institutions Amendment (No. 47).—This Act provides for the imprisonment of unruly inmates of inebriate institutions.

Pharmacy Act Amendment (No. 48).—This Act adds to the fees payable to the Pharmaceutical Society by registered chemists.

Methodist Church of Australasia in New Zealand (No. 49).—In Australia and New Zealand the United Methodist Free Churches, the Bible Christian

Churches, and the Primitive Methodist Churches have entered into organic union with Wesleyan Methodist Churches. *Query*, why the new name thus made necessary requires statutory sanction; but this Act enacts that the New Zealand branch of the new united Church shall be "The Methodist Church of Australasia in New Zealand."

Legislative Council Act Amendment (No. 50).—This Act deals with Speakership and Chairmanship of Committees in the Legislative Council, and provides for such cases as that where the Speaker's term expires while Parliament is not in session.

Companies Amendment (No. 51).—This Act contains, besides corrections of certain slips in the drafting of the Act of 1901, provisions directed against the non-payment of calls by directors. It also enlarges the already stringent provisions of the Mining Companies Act, 1894, which provide, in the case of mining companies, for the keeping of accounts and the making of half-yearly statements, which shall be open to the inspection of shareholders and creditors. In regard to the register of mortgages, it repeals the requirement that the Registrar shall keep an index of that register.

Midland Railways Petitions Settlement (No. 52).—The New Zealand Midland Railway Company, Limited, having made default in the performance of a contract with the Government, the Government took possession of the railway. Under this Act a certain sum is to be paid in satisfaction of the consequent grievance of the debenture holders and shareholders, who appear to have no legal remedy.

Railways Authorisation (No. 53).—This Act authorises the construction of about twenty-eight miles of railway by the Government.

Military Pensions (No. 54).—This Act extends the provisions of the Military Pensions Act, 1900, to the 8th, 9th, and 10th Contingents sent to South Africa.

Factories Amendment (No. 55).—This Act requires the permission of an inspector in every case in which a woman or boy works overtime. It also extends the provision of the Factories Act, 1901, directed against the risk of infection of food by diseased employees, so as to cover also textile fabrics. It also slightly modifies the provision as to a minimum wage with the effect of reducing the minimum in some cases.

Native and Maori Land Laws Amendment (No. 56).—The most noticeable provision of this Act is one whereby orders of the Native Land Court, which have the effect of mortgages on land owned by natives, are not to confer upon the mortgagee power of sale till after five years.

Town Main Streets (No. 57).—Under this Act the Minister of Lands may in special cases permit the main streets of new towns to be less than ninety-nine feet wide, as previously required, but not less than sixty-two feet.

Waihi Hospital District.—No. 58.

Municipal Corporation Amendment (No. 59).—This Act (*inter alia*) enlarges the already existing requirement for the provision of an open space

attached to every new house in a town. It restricts the power of local authorities to require a minimum cubic space in all rooms to cases where a house is occupied by more than one family. It extends the requirements of inspection of public buildings to churches.

Public Health Amendment (No. 60).—This Act extends in several particulars the power of local authorities for preventing the spread of infectious diseases, and it also facilitates the combination of local areas for such purpose.

Workers' Compensation for Accident Acts Amendment (No. 61).—This Act extends the provisions of the principal Act to "workers in agriculture," agriculture having apparently not been covered by the phrase "industrial work" in the principal Act. It also reduces to one week instead of two weeks the minimum time for which a worker claiming compensation must have been disabled.

Appropriation.—No. 62.

V. SOUTH AFRICA.

1. CAPE COLONY.

No Legislation.

2. NATAL.

[*Contributed by* ISRAEL DAVIS, ESQ.]

Acts passed—62;

Foreign Probates (No. 2).—The executor or trustee of any proved will under the Letters of Administration and Foreign Probates Act, 1894, is by this Act empowered to appoint by power of attorney an agent in the Colony to do all or anything that the executor or trustee might himself be required or entitled to do under such will.

Lotteries (No. 3).—The Lotteries Act, 1878, is by this Act extended to all lotteries for money or money prizes or for securities for money or for land or any other thing whatsoever, whether such lotteries be known as "sweeps" or under any other name; and any person establishing or conducting or assisting such lottery, as by allowing a house to be used for it or printing, circulating, or publishing any notice of it, is liable to a fine of £50, or six months' imprisonment, and it makes no difference whether the lottery in respect of which any act in the Colony is charged was held or intended to be held elsewhere than in the Colony.

Shipping: Regulation of Vessels (No. 4).—This Act empowers the Governor in Council to make regulations as to any ship, boat, or vessel plying on or near the coast of Natal in the following matters: the classification of vessels, their equipment with lights and life-saving apparatus, the number of passengers carried, the survey and inspection of vessels. Fines may be imposed for contravention of the regulations, and a vessel going to sea without the necessary certificate may be detained.

Registration of Deaths.—No. 5 provides for registration of the deaths of persons belonging to the Imperial military forces in Natal, or to a police, volunteer, or other military force of Natal.

Fencing.—By No. 9 authority is given to private persons over whose land public roads pass to erect gates across the road subject to the sanction of the Chief Engineer, but no gates are to be erected upon any main trunk road.

Water Supply.—No. 11 gives the Governor power to provide water supply for villages under the Act of 1897 upon a memorial of three-fourths of the resident householders, the expense to be defrayed by local rates to be imposed by the Governor.

Supply.—No. 15 provides £5,433,199 for the public service of the Colony for the year ending June 30th, 1903.

Pensions.—No. 16 provides that civil servants may be required to retire at fifty-five years upon pensions calculated according to the law of 1874, and that every such servant except judges shall retire at the age of sixty-five. Women on the fixed establishment who have served for ten years shall be entitled to retire at fifty-five upon pension.

Indian Immigrants.—No. 17 varies the law of election to the Indian Immigration Trust Board. No. 23 empowers the Board to raise a loan of £250,000.

Grass Burning.—No. 18 amends and extends the Act of 1895, and provides for enquiries by magistrates into fires occurring along the Government railways.

Criminal Law.—By No. 21 the lessor of premises is empowered to apply to the magistrate for the summary ejectment of persons who use them for the purposes of a brothel for habitual prostitution, and these persons are subjected to penalties.

Indemnity.—No. 22 provides for a further indemnity for persons who in good faith have acted for the suppression of hostilities and the maintenance of good order and government.

No. 30 extends the operation of the indemnity to a later date (December 5th, 1902), and recognises that the state of war ceased on May 31st, 1902.

Land Settlement.—No. 24 empowers the Governor in Council to acquire lands for the settlement of persons of European descent.

Native Law.—No. 28 makes additional provision for "togt" labour in boroughs. "Togt-man" means a day labourer or labourer for other terms

less than a month, or a jobber, and applies only to natives. The town council of a borough may make by-laws providing for registration of togt-men, requiring that togt-men shall reside in a special compound, regulating the erection, structure, maintenance, and inspection of compounds, requiring togt-men to wear badges, etc. Fees may be charged for registration and for licences for compounds.

"Private" Acts.—No distinction is made between public and private Acts, but the following examples of legislation may be conveniently grouped under this title: No. 10 incorporates the Natal Institute of Architects. No. 12 authorises the construction of a narrow gauge railway from Kearsney to Mapumulo. By No. 20 a tramway is authorised from Durban to New Brighton Station.

3. ORANGE RIVER COLONY.

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Ordinances published—33.

Roman-Dutch Law.—No. 3 provides that the Common Law in the Colony shall remain the Roman-Dutch Law, so far as it has been introduced into and is applicable to South Africa; and that the Statute Law of the Orange Free State shall continue in full force, unless amended or repealed by this and subsequent Ordinances. Further, the Act gives the meaning of certain terms, the mode of the promulgation of by-laws made by the Governor or Lieutenant-Governor, and of Ordinances, and contains certain provisions as to the repeal of laws.

High Court.—No. 4 re-establishes the High Court of the Orange River Colony at Bloemfontein, which shall have jurisdiction in all matters and causes, whether civil or criminal, arising in the Colony, or having arisen in the late Orange Free State prior to the annexation thereof, and over all persons whomsoever residing and being within the Colony. The judges shall hold office during good behaviour, and one judge by himself shall be competent to hear cases and give decisions, but in case there are two judges sitting who differ in opinion, the case shall be removed to the Transvaal Supreme Court for decision. It provides for the admission of barristers, solicitors, notaries, and conveyancers. Trial in criminal cases shall be before a judge and nine jurymen. The circuit system shall be maintained, while all proceedings in the High Court and the Circuit Courts shall be in English, although in cases of necessity the use of the Dutch language shall be allowed. The Court shall continue to be a Court of Review for the proceedings of all inferior Courts, and a Court of Appeal in criminal cases from the Courts of resident magistrates. Appeal from the High Court shall lie, in civil cases, to the Supreme Court of the Transvaal and

to the Privy Council. In criminal cases leave to appeal from the High Court and the Circuit Courts to the Supreme Court of the Transvaal may be applied for in cases of irregularity or illegality, or may be reserved by the Courts themselves. The rules of the High Court shall be made by the judges and published in the *Gazette*. The High Court and Circuit Courts of the late Orange Free State are abolished at the moment these Courts of the Orange River Colony are opened.

Alteration and Amending of the Common Law.—No. 5 enacts that the law administered by the Supreme Court of the Cape Colony having reference to questions of fire, life, and marine assurance, stoppage *in transitu*, and bills of lading shall be the law to be administered by the High Court of the Orange River Colony. Civil imprisonment for non-payment or non-satisfaction of any judgment or decree granted or issued by the High Court shall be abolished, and no contract shall any longer be void or voidable by reason of *læsio enormis*.

Justices of the Peace.—No. 6 provides for the reappointment of justices of the peace, who shall hold office during pleasure, and whose duty it will be to preserve the public peace with the assistance of constables, officers, and others of His Majesty's subjects; to enquire into all crimes committed within their jurisdiction; to summon and examine witnesses upon their oath; and to apprehend all criminals and offenders of the law. Special justices of the peace shall be appointed by the Lieutenant-Governor with a limited jurisdiction in certain cases of assault and theft and contravention of any municipal regulations. The form of procedure in the Courts of special justices of the peace shall be the same as that of the Courts of resident magistrates. The justices shall have power to transmit cases to the Courts of the resident magistrates and to imprison certain accused persons who are either accused, or committed for trial, or convicted. Every case tried under this summary jurisdiction shall be submitted for review to the High Court.

Resident Magistrates.—No. 7 amends the High Commissioner's Ordinance No. 7 of 1901 and consolidates the laws relative to Courts of resident magistrates. These Courts shall include those of additional and assistant resident magistrates and periodical Courts of resident magistrates.

Sheriffs.—No. 9 contains similar provisions to Proclamation Transvaal No. 17 of 1902.

Taxation of Costs.—No. 10 provides for the taxation of bills of costs in judicial proceedings. Any bill of costs may within a limited time be brought for revision from the Taxing Officer of the High Court or of any Circuit Court to the High Court or a judge in chambers.

Law of Evidence.—No. 11 contains similar provisions to Proclamation Transvaal No. 16 of 1902, but refers in all cases not provided for to the rules of evidence as administered by the Supreme Court of the Cape of Good Hope, as was the former rule in the Transvaal.

Criminal Procedure.—No. 12 regulates the mode of procedure in criminal cases. Prosecution shall take place in the name of the King, at the instance of the Attorney-General or the private party injured or directly interested, if the Attorney-General decline to prosecute. All prosecutions shall be barred after the lapse of twenty years from the time when they were committed, with the exception of prosecutions for murder.

Warrants for apprehension of alleged offenders shall be granted by a judge of the High Court, a resident magistrate, or a justice of the peace, on the written application of the Attorney-General. The warrants are to be executed by the law officers within the jurisdiction of those who granted them, and they shall have the right to search. Private persons shall have the right to arrest in certain cases. In every case when a crime or offence has been committed of a serious nature, a preparatory examination shall be held before a resident magistrate, during which the prisoner shall be entitled to have the assistance of a legal adviser and to have his own witnesses heard. If it shall appear to the magistrate that sufficient grounds exist for doing so, he shall commit the alleged offender for trial. A copy of such preparatory examination shall forthwith be transmitted to the Attorney-General. Every prisoner thus committed in respect of crimes stated on the face of the warrant of commitment as being not capital shall be entitled to bail, the amount to be determined by the magistrate; while the High Court or any judge of the High Court shall have the power to allow bail in all cases. The prisoner to be brought to trial after the lapse of twenty-one days in Bloemfontein, or thirty-one days in the district of any Circuit Court, but not later than the second session of the Court after the date of his commitment.

Rules are laid down for the drawing of indictments for different crimes, amending the same, and the finding of certain verdicts upon certain facts as described in the indictments. Different forms are appended.

Repeal.—No. 13 repeals five chapters of the Law Book, eight Laws and Proclamations Nos. 4 and 9 of 1901.

Arms and Ammunition.—No. 15 contains similar provisions to Ordinance Transvaal No. 13 of 1902.

Juries.— No. 17 amends Chapter VIII. of the Law Book regarding juries in criminal cases, and provides similarly to Ordinance Transvaal No. 10 of 1902.

Protection of Cattle.—No. 18 contains similar provisions to Ordinance Transvaal No. 35 of 1902.

Admission of Banks.—No. 20 removes the restrictions imposed by Chapter CII. of the Law Book on the admission of foreign banks within the Colony. It allows any bank to carry on banking business in any part of the Colony, provided it has obtained permission from the Lieutenant-Governor, taken out a licence required by law, and—in case of a bank having its head office outside the Colony—has lodged with the Colonial Secretary a power of attorney appointing a chief agent in the Colony.

Police Offences.—No. 21 consolidates and amends the laws relating to the suppression and punishment of offences against public property, public health, peace, religion, decency, and safety, and of acts causing hindrance, obstruction, and nuisance. It provides against the keeping and visiting of gambling houses, against Sunday trading, and Sunday entertainments. There are police provisions applicable to special localities like cities, towns, villages, communities, and proclaimed diggings. It also contains general police provisions applicable throughout the Colony against improper and negligent handling of horses and vehicles, trespassing, slaughtering animals, and betting in public places, drunkenness, and the use of threatening or abusive language. Miscellaneous provisions are inserted for the inspection of butchers' kambles and slaughterhouses, premises of wine and spirit dealers who are suspected of selling at unlawful hours or on prohibited days or without a licence, etc. The offences shall be tried by a resident magistrate, or in certain cases by a justice of the peace.

Land Settlements.—No. 22 institutes the Land Settlement Board of the Orange River Colony, who, with the approval of the Lieutenant-Governor, shall lease or sell Crown lands within the Colony to such applicants as shall appear to them most suitable as occupants thereof, while the Lieutenant-Governor shall be allowed to allot particular portions of land to applicants who have rendered public service. Every lease shall be granted for a term of five years at a rent equal to 5 per cent. of the purchase price of the land, and upon conditions that the lessee shall personally occupy and cultivate and not hypothecate the land, and comply with the further terms set out in the Ordinance. The Lieutenant-Governor shall have power to make advances to the lessee for permanent improvements on certain conditions and terms of repayment. In case of sale the purchase price shall be payable in instalments, and after payment in full the purchaser shall receive a grant on perpetual quit-rent; the conditions of occupation, cultivation, receipts and repayments of loans shall be the same as those of leases. Rights to minerals are in all cases reserved by the Crown. The sums payable for rent and as purchase money are set out in schedules.

Central South African Railways.—No. 23 gives power to the Lieutenant-Governor from time to time to make by-laws regulating the management and working of these railways, and provides for the penalties against any contravention of such by-laws (see Ordinance Transvaal No. 25 of 1902).

National Bank.—No. 24 changes the name of the National Bank into that of "The National Bank of the Orange River Colony, Limited," and provides for its continued incorporation and existence under the same articles of association as before.

Martial Law.—No. 25 withdraws martial law from the Colony and contains similar provisions to Ordinance Transvaal No. 38 of 1902.

Concentration Camps.—No. 26 contains similar provisions to Ordinance Transvaal No. 39 of 1902.

Legalising Marriages.—No. 27 provides for the legalisation of marriages solemnised since May 24th, 1900, by landdrosts, and since February 28th, 1902, by marriage officers appointed by the late Government of the late Orange Free State.

Bills of Exchange.—No. 28, for the consolidation, amending, and declaring the law relating to bills of exchange, cheques, and promissory notes, contains the same provisions as the Bills of Exchange Proclamation of the Transvaal (No. 11 of 1902).

Stamp Duties.—No. 29 provides for the imposing of stamp duties on leases, which are set out in a schedule.

Public Holidays.—No. 31 enables the Lieutenant-Governor to proclaim public holidays.

Deeds Registry.—No. 33, regarding the Deeds Office and the registration of deeds, adopts the provisions of the Proclamation Transvaal No. 10 of 1902.

4. TRANSVAAL.

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Proclamations—Administrator's (January 1st to June), Nos. 1 to 40 of 1902.
Ordinances—Lieutenant-Governor in Council (June to December), Nos. 1 to 49 of 1902.

Government.—By *Letters Patent* dated August 2nd, 1901, the office of Governor and Commander-in-Chief of the Colony of the Transvaal is created, and provisions are made for the Government thereof. A public seal shall be kept by the Governor. The executive powers shall vest in an Executive Council, the members thereof to be appointed by the King and to hold their places during pleasure. The legislative powers shall vest in the King, but there shall be a Legislative Council, whose resolutions, however, can be vetoed by the Governor, and whose Ordinances can be disallowed by the King through a Principal Secretary of State. Both Governor and Legislative Council shall in the making of any Ordinances observe all rules, regulations, and instructions issued by the King.

The Governor shall have power to make grants of land, to appoint judges and other officers, to grant pardon and remit fines, but he shall not have the power to banish persons for any other but political crimes. The South African Constabulary shall be under the High Commissioner.

In the *Instructions* of the same date it is provided that the Executive Council shall be similarly constituted, as formerly, of the following members, *ex officio*—viz., the Governor, the Lieutenant-Governor, the Colonial Secretary, Attorney-General, Colonial Treasurer, Commissioner of Mines, and Commissioner of Native Affairs. The Governor is entitled to add extraordinary members, and the Council shall not meet unless summoned by the

Governor. The Governor alone shall have the power of initiative, and he is not to be bound by the advice of the Council.

The Legislative Council shall consist of the members of the Executive Council and such other persons as may be appointed by the King. The Governor may appoint extraordinary members. Every member shall have the right of initiative except on matters of revenue, which shall remain exclusively in the hands of the Governor.

All laws shall be styled Ordinances. Certain classes of Ordinances are excepted from the Governor's assent, and shall require the assent of the King, while provisions are made in cases of emergency and for private Ordinances.

The Governor shall be obliged to promote religion and education amongst the natives and to protect their persons and their property.

Regulations are made for the exercise of pardon and the issuing of a blue-book.

These Letters Patent and Instructions were proclaimed by *Special Proclamations* dated June 21st, 1902, and which came into operation on the same day. The numbers of the Ordinances run from that date.

Lieutenant-Governor.—No. 24 (Ordinances) transfers all powers and jurisdiction of the Governor of the Transvaal to the Lieutenant-Governor.

Medical Practitioners.—No. 1 (Proclamations) requires all persons who wish to practise as a physician, surgeon, dentist, or chemist and druggist to obtain a licence from the Secretary of the Transvaal Administration.

School Committees.—No. 9 (Proclamations) abolishes the school committees existing under the former Government and vests all immovable property belonging to such committees in the Director of Education for the Transvaal.

Registration of Deeds and Mining Rights.—No. 10 (Proclamations) provides for the keeping of records in the Deeds Office. It regulates the preservation of the records of the Registrar of Deeds of the late South African Republic, and maintains the established system of registration of all deeds of grant, transfer and mortgage of immovable property, antenuptial contracts, kinderbewyzen, notarial bonds and deeds, concessions and mynpachts, leases and servitudes, and the issue of certificates of registered titles. No registration shall take place without proof that all transfer duties shall have been paid to the Government. The records shall be open to the public for inspection, upon payment of the prescribed fees.

No. 35 (Proclamations) and Nos. 6 and 21 (Ordinances) contain similar rules for the Registration of Mining Rights Office at Johannesburg, the preservation of all records in the office of the late Mining Commissioners and the registration of titles to, leases, and mortgages of mining rights and stands, and leasehold lots, and the issuing and renewing of all licences to mining rights and stands.

Transfer Duty.—Nos. 8 and 27 (Proclamations) and No. 27 (Ordinances)

fix a duty of £1 5*s.* per cent. *ad valorem* on the transfer of any immovable property if not by way of legacy or inheritance, and on the obtaining by grant or transfer of any lease of immovable property, mynpacht-claim for not less than twenty-five years or the natural life of any person named. Exemptions are made in cases of joint ownership, insolvency, and between husband and wife. Rules are laid down for the disclosure of the names of the principals at public and private sales. The latter have to be in writing. Leases of land for not less than ten years or the natural life of any person mentioned or for any mynpacht must be notarial.

Incorporated Law Society.—No. 18 (Proclamations) and No. 4 (Ordinances) create the Incorporated Law Society of the Transvaal, which is to take the place of the "Ingelyfde orde van Procureurs in de Zuid Afrikaansche Republiek," its Council to consist of nine members. All persons applying for admission as attorneys, notaries, or conveyancers shall give notice to the chairman of the said council.

Burial Grounds.—No. 20 (Proclamations) authorises the Administrator to expropriate lands to be enclosed and maintained as burial grounds for certain of the British and Boer forces who died from wounds or otherwise in the late war.

Letters Patent and Trade Marks.—Nos. 22 and 29 (Proclamations), in amending the Law No. 10 of 1898 relating to letters patent for inventions and trade marks, entitles the Governor to appoint a Commissioner of Patents, whose office shall be styled the Patent Office, and who shall issue letters patent. The provisions regarding the application for letters patent, the provisional and complete specification, their examination, the decision of the Commissioner and appeal therefrom, provisional protection, publication, opposition to the grant and procedure, sealing and term of patents, as well as regarding application for revocation of letters patent granted, and the consequent procedure, are amplified and extended. Special provisions are made for the assignment of inventions regarding instruments or munitions of war to the Secretary of War.

No. 23 (Proclamations) amends Law No. 6 of 1892 and provides for the registration of trade marks by the Commissioner of Patents, and who shall be styled Registrar of Trade Marks, on application by or on behalf of any person claiming to be the proprietor.

Bills of Exchange.—Nos. 11 and 13 (Proclamations) extend the provisions of the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), to the Transvaal, but maintain certain modifications—*e.g.*, that there shall be no days of grace in the Transvaal for bills of exchange and promissory notes.

Stamp Duties.—Nos. 12 and 26 (Proclamations) and No. 14 (Ordinances) amend the law relating to stamp duties, and contain provisions regarding allowances for spoilt stamps, the mode of calculating *ad valorem* duties, the manner of affixing and cancellation of adhesive stamps, the receiving in

evidence of documents which are not duly stamped, the stamping of bills of exchange and promissory notes, brokers' notes, insurance policies and receipts, charges of duty on limited liability companies, loan capital, and bank notes, and penalties against certain forgeries and fraudulent practices.

Administration of Justice.—No. 14 (Proclamations) and No. 2 (Ordinances) re-establish the *Supreme Court of the Transvaal* at Pretoria, which shall consist of one Chief Justice and not less than three puisne judges to be chosen from among advocates admitted to practise in the said court or judges of the Supreme Court of any British Colony, and who shall be appointed by the Governor and hold their offices during good behaviour. There shall be one Registrar and one Master of the Court to be appointed by the Governor. Advocates, attorneys, notaries, and conveyancers shall, as before, be admitted to practise by the Court, after having given proof to possess the due qualifications and taken the proper oaths in open court. Any person admitted to practise as a barrister (advocate) or a solicitor (attorney) in England, Ireland, Scotland, Cape Colony, or who shall have practised seven years successively as advocate or attorney in any other British Colony, will be admissible for enrolment by the Court. In case of colonial advocates, they will have to pass a previous examination, and give proof of not having acted in partnership with any attorney of the Court in which they practised.

The Roman-Dutch Law, except in so far as it is modified by legislative enactments, shall remain the law of the Colony.

The Supreme Court shall continue to be a Court of Review of proceedings of inferior Courts on the grounds of incompetency, malice, or corruption of the judge, and irregularity.

The Supreme Court shall also continue to be a Court of Appeal from all decisions by the judge in chambers, the Witwatersrand High Court, and all District Courts.

The Court shall be composed, as of old, in all civil proceedings in first instance of two members, in appeal of three members or more. Appeal shall lie from the Supreme Court of the Transvaal to the Privy Council.

All rules and orders of the High Court of the late South African Republic are maintained, to be in force until repealed or amended by the Supreme Court with the approval of the Governor and after publication in the *Gazette*.

The language to be used in court shall be English, but any Court in the Transvaal shall be entitled to allow the use of the Dutch language in civil and criminal proceedings whenever such is considered necessary for the better and more effectual administration of justice.

The Witwatersrand High Court shall consist of one judge of the Supreme Court and shall have, within an area defined in Government Notice 117 of 1902 (Government *Gazette*, April 15th, 1902), the same juris-

diction, powers, and authority as the Supreme Court of the Transvaal, save appellate jurisdiction and the power of reviewing the proceedings of inferior Courts. Rules and orders to be framed by the Supreme Court.

All jurisdiction in civil matters vested in the Special Criminal Courts at Pretoria and Johannesburg by s. 11 of Proclamation No. 6 of 1901 are abolished.

No. 12 (Ordinances) constitutes the Supreme Court of the Transvaal at Pretoria a *Court of Appeal* from the decisions of the High Court or any Circuit Court of the Orange River Colony in all civil cases as well as in such criminal cases as shall have been provided by law or reserved by the Court or judge for the determination of questions of law.

No. 19 (Proclamations) regards the *Special Criminal Courts* of Pretoria and Johannesburg established by Proclamation No. 6 of 1901, and amends s. 8 thereof by making new regulations for appeal in criminal cases from those Courts to the Supreme Court at Pretoria.

No. 21 (Proclamations), amended by No. 47 (Ordinances), replaces the former landdrosts' permanent Courts of *Resident Magistrates* in the district of Pretoria and eight other districts, with power to the Governor to increase their number, and also to establish periodical Courts at such other places as he shall consider necessary (see *Gazette*, November 28th, 1902). The Governor shall from time to time appoint one or more assistant resident magistrates where necessary. Such Courts shall be Courts of Record, and the resident magistrates shall, as far as not otherwise herein provided, exercise all the jurisdiction and powers, discharge all the duties and enjoy all the privileges of the former landdrosts. The jurisdiction of such magistrates shall comprise in civil cases (*a*) with regard to persons, all actions brought against persons residing or carrying on business within their particular district, or against persons residing elsewhere if with reference to land situated within such district; (*b*) with regard to things, all actions founded on "liquid documents" to the amount of £500 and interest, other claims where the value of the matter in dispute does not exceed £100, and actions of ejectment against occupiers of lands, tenements, or premises situate within such district. They shall have the power to grant arrests and interdicts, but in cases above their ordinary jurisdiction such orders shall only be provisional and be returnable in the Supreme Court of the Transvaal. Their judgments shall be executable against the movable and immovable property of the debtor or by civil imprisonment, and, if outside their jurisdiction, with the endorsement on writ or warrant by the magistrate in whose district execution is required. Appeal from their decisions shall lie to the Supreme Court. Certain cases may be brought in first instance to the said Supreme Court, though they fall within the magistrate's jurisdiction. Law agents may be admitted to practise in the said courts by such magistrates, and shall be under their jurisdiction. Advocates and attorneys admitted to practise in the Supreme Court are admitted *ipso jure*.

In criminal matters they shall have jurisdiction in all cases of crime and offence wholly or partly committed within their district or within two miles from the boundary, and which are not punishable by death, transportation, or banishment from the Colony. Their power of punishment shall, however, be limited to fines not exceeding £75 or imprisonment with or without hard labour for a period not exceeding six months or by whipping privately in prison not exceeding twenty-five lashes, and in case of juvenile offenders fifteen cuts with a cane, except if specially empowered by law to exceed these limits. All sentences to three months' imprisonment or more, a fine of £25 or more, and to any number of lashes shall be under review of the Supreme Court, to which also appeal shall lie from any conviction, besides review on points of law.

Special mention is made of the *Chief Magistrate of the District of Witwatersrand* and the two Civil Magistrates at Johannesburg.

A *Native Court* is established by this and No. 40 (Proclamations) at Johannesburg for the Witwatersrand district, to be holden before a special magistrate. Assistant magistrates of the Native Court may be appointed, and the magistrate may be directed by the Governor to hold a temporary or periodical Native Court elsewhere. The Court shall have jurisdiction criminally to try all contraventions by coloured persons of provisions of laws applicable exclusively to such persons, all offences against the laws relating to master and servant (if one of the parties is a native), the Native Passes Proclamation and the regulations thereunder, and civilly over all matters in dispute between coloured persons falling within the jurisdiction of a Court of Resident Magistrate.

Schedule B sets out the rules, orders, and regulations to be observed in any of the said Resident Magistrate and Native Courts.

No. 25 (Proclamations) withdraws the divorce suits among natives from the Native Court and brings them in the same Court and with the same procedure as if the parties thereto had been white persons.

Juries.—No. 10 (Ordinances) amends the existing rules relating to juries in criminal cases, and qualifies and obliges every white man between the ages of thirty and sixty years who is owner or occupier of any immovable property valued at not less than £300, or receives a salary or wages amounting to not less than £150 a year, and who is not disqualified or exempted by the terms of the Ordinance, to serve as a juror. Jury lists shall be made at the beginning of every year and revised by the resident magistrate and a special Court. Several penalties are set out for not obeying summons to serve, falsely claiming exemption or illegally being excused by the sheriff, for bribing jurymen, removing or defacing or in any way falsifying jury lists, etc.

Law of Evidence.—No. 16 (Proclamations) amends the law of evidence to be administered in the Courts of the Transvaal. Provisions are set out regarding the competency of witnesses in civil and criminal cases, the

advisability or inadvisability and relevancy or irrelevancy of evidence, the mode of proving certain facts and matters, the production of documents and books, the depositions of absent and testimony of deceased witnesses, and their excusation and privileges. In all cases not provided for in this Ordinance the rules of evidence administered by the Supreme Court of Judicature in England shall be followed. (Formerly the rules of evidence administered by the Supreme Court of Cape Colony were followed, as is the case in the Orange River Colony.)

Justices of the Peace.—No. 15 (Ordinances) fixes the maximum punishments which may be inflicted by resident justices of the peace in accordance with the provisions of Law No. 7 of 1894 at a fine of £25 or imprisonment with or without hard labour of one month.

Sheriffs.—No. 17 (Proclamations) maintains the office of sheriff in the Transvaal, whose duty it is to serve writs and summonses, to execute sentences and judgments and all other orders, commands, and processes of the Supreme Court and the Circuit Courts of the Colony, and to detain in prison all persons committed to his custody. The sheriff is to appoint deputy sheriffs. Provisions are made regarding the execution of civil judgments and of death sentences.

Interpretation of Laws.—No. 15 (Proclamations) gives certain rules for the interpretation of Proclamations, Ordinances, and Laws, and sets out certain words to be used for shortening the language thereof.

Marriages.—No. 31 (Proclamations) legalises certain marriages solemnised in the Transvaal under Law No. 3 of 1871 and Law No. 3 of 1897 by officers appointed by the Military Governor and certain ministers of religion.

No. 26 (Ordinances) legalises all marriages solemnised by landdrosts and ministers of the Gospel since September 1st, 1900, under the provisions of Law No. 3 of 1871.

Lunatics.—No. 36 (Proclamations) maintains the established principles relating to the custody of lunatics, including the criminals who are detained during the Governor's pleasure, and those who are treated in private dwelling houses. It makes additional provisions for the better administration of asylums, prisons, and private dwelling-houses. The Roman-Dutch curators for the care and administration of the lunatic's property are maintained, and their duties amplified. Provisions are made for the custody of lunatics brought into the Transvaal from neighbouring colonies.

Natives.—No. 3 (Ordinances) maintains the provisions of Law No. 4 of 1885, and confers on Native Commissioners and Sub-Commissioners the powers and jurisdiction conferred by that Law on Commissioners and Sub-Commissioners of Natives. Criminals shall only be sentenced to lashes in case of second or subsequent conviction within three years, and none shall be inflicted without confirmation by a judge of the Supreme Court.

No. 20 (Ordinances) imposes upon natives a consolidated tax of £2,

to be paid by every adult male aboriginal native in the Colony, and a further tax of £2 for each wife whom he possesses above one.

No. 28 (Ordinances) entitles certain deserving natives to obtain a certificate of registration in lieu of a pass, and which shall exempt them from the operation of the existing Law relating to passes.

No. 43 (Ordinances) prohibits natives to be out between the hours of 9 a.m. and 4 p.m. without special passes.

No. 44 (Ordinances) amends the schedule of Law No. 4 of 1885 relating to the management of natives.

Administration of Estates.—No. 28 (Proclamations) provides rules for regulating the administration of the estates of deceased persons, minors and lunatics, and of derelict estates. The Orphan Chamber and the office of Orphan Master are abolished, but the Master of the Supreme Court shall take the place of the latter, and the mode of procedure remains the same. Every notice of death shall in future be sent to the said Master, every will deposited and registered by him, all inventories of estates made after death forwarded to him. Letters of administration shall be granted by him to executors, testamentary and dative, foreign letters of administration given effect to, and tutors and curators appointed. The duties of executors, tutors, and curators are set out. The Guardians' Fund is maintained, but, as was already the case in Cape Colony, the Falcidian and Trebellian portions, as well as the *lex hac Edictali*, are abolished; no legitimate portion can furthermore be claimed as of right, and a number of tacit hypothecs shall disappear, together with the power of substitution and surrogation given to executors and tutors.

Gold Mines.—No. 32 (Proclamations) abolishes the 5 per cent. tax on the net profits of gold mines, and institutes a tax of 10 per cent. on the annual net produce of all gold-bearing properties in the Transvaal in its stead, at the same time setting out in what manner such annual net produce shall be calculated.

Contract for Mining Rights.—No. 37 (Proclamations) extends the date referred to in s. 1 of Proclamation Transvaal No. 12 of 1901 as "the date to be hereafter notified in the *Gazette*" to August 1st, 1902.

Pretoria.—No. 7 (Proclamations) and No. 31 (Ordinances) make temporary provisions for the municipal government of Pretoria.

Johannesburg.—No. 38 (Proclamations) makes provisions for the levying and collection of rates for the purposes of the municipality of Johannesburg.

No. 39 (Proclamations) and Nos. 27, 34, and 41 (Ordinances) grant additional powers to the Johannesburg Town Council.

No. 30 (Ordinances) gives certain powers to the Commission appointed to inquire into the Johannesburg Insanitary Area Improvement Scheme.

Post Office Savings Banks.—No. 33 (Proclamations) repeals Law No. 9, 1892, and Law No. 6, 1893, and establishes new rules and regulations relating to the Post Office Savings Banks.

Interest on Mortgage Bonds.—No. 32 (Proclamations) extends the provisions made by Proclamation No. 27 of 1901 by declaring that, independent of the legality or illegality of the Proclamation issued by the Government of the late South African Republic, and dated October 25th, 1899, interest on mortgage bonds would be payable from June 1st, 1902, and that actions at law for recovering the capital sum of any mortgage bond included in the said Proclamation might be brought and maintained after January 1st, 1903.

After the passing of this Proclamation the Supreme Court at Pretoria declared the said Proclamation of October 25th, 1899, to be invalid *ab initio*.

No. 42 (Ordinances) deals with the difficulty thus created, and postpones all actions on bonds passed before October 25th, 1899, upon which interest during the war period was still due; and actions for the recovery of capital sums secured on mortgage bonds which were passed between October 25th, 1899, and May 31st, 1902, are not to be brought before January 1st, 1904. Interest is to be payable on the deferred interest from June 1st, 1902.

Arrear Licence Moneys.—No. 11 and No. 18 (Ordinances) overrule the effect of a judgment of the Supreme Court, and exempt all holders of claims and stands from the licence moneys, or such share of the licence moneys as are due to the Government on such claims and stands, for any portion of the period of the war during which they had not the beneficial occupation thereof, and regulates the manner in which the owner shall be able to recover such share of the said licence moneys as are due to him for any portion of the same period.

Volunteer Corps.—Nos. 5 and 38 (Ordinances) make provisions for the formation, discipline, and maintenance of Volunteer Corps.

Arms and Ammunition.—No. 15 (Ordinances) regulates the possession of arms and ammunition. All inhabitants other than naval and military officers require a licence (which is at any time revocable) to possess and carry such arms and ammunition as set forth in the licence, the ball ammunition not to exceed two hundred rounds. Dealers in or manufacturers of arms and ammunition require a special licence, and may not sell to any others but licensees, while they require permits for the transportation of arms and ammunition throughout the Colony. The licences are granted for a year by the resident magistrate or magistrates specially appointed, but are at any time revocable by the Lieutenant-Governor. Penalties upon contravening these rules are fixed at a maximum of one year's imprisonment or a fine of £250. Registers shall be kept for all licences issued. Any lands, houses, places, waggons or other vehicles may be stopped and searched for any hidden arms and ammunition by or by order of a resident magistrate, justice of the peace, or officer of police, and persons found to be in unlawful possession of any arms and ammunition may be arrested without warrant. A special permit is required for the importation of arms and ammunition, and any importer not being a licensed dealer shall be required to obtain

a licence within seven days after such importation. Rifles and ball ammunition shall be imported by the Government and stored in depots or magazines, and the persons in charge of such magazines shall be allowed to sell these articles to holders of special licences for such purpose. The resident magistrates and the persons in charge of such magazines shall register the names of all persons to whom such special licences have been granted and rifles and ammunition sold. Special permits may be granted for the importation of sporting rifles and ammunition for the importer's own use.

Dealers in arms, ammunition, or explosives require a special annual licence, and may not sell to any persons but holders of licences, on pain of imprisonment with or without hard labour for a period not exceeding three years, or a fine not exceeding £1,000. The licence shall be displayed on some conspicuous place on the walls outside, over or near the door of the premises, and no such licence shall be transferable without the sanction of the Colonial Secretary. All gunpowder in possession of a licensed dealer beyond a quantity of fifty rounds shall be stored in some magazine, and a special permit from the resident magistrate shall be required to receive from the person in charge of the magazine a quantity not exceeding fifty pounds in weight. Licensed dealers shall keep books of their transactions and render accounts to the resident magistrate; the books to be open for inspection by police officers.

Licences for the possession of any arms other than a rifle may be issued by the Lieutenant-Governor to natives or other coloured persons.

Customs.—No 22 (Ordinances) repeals Proclamation Transvaal No. 3 of 1902, and whilst waiting for the time when the Transvaal shall be able to enter a South African Customs Union without sacrificing what the Government regard as the vital interests of the Transvaal—reduction in the cost of food-stuffs and the necessaries of industrial production—makes the following provisional amendments of Law No. 4 of 1894. Public stores and articles imported or taken out of bond for the exclusive use of the Government, or for the exclusive and personal use of any member of H.M. regular forces, shall be free of duty. The duties on the classes of such goods (other than those which are already admitted free of duty under the existing tariff) with which the Colony has practically to be refitted, and the importation of which, for some time to come, must be above the normal rate, are abolished—viz., agricultural implements, metals, cement and wood (building materials), plants, and machinery. Certain special duties, *e.g.* on coal, oats, oat-hay, etc., are repealed, while others, *e.g.* on chocolate and cocoa, coffee, milk, confectionery, including jams, etc., preserved fruits and pulp, matches and wax lights have been lowered. In order to make good a portion of the loss suffered therefrom, the duties on wines, spirits, tobacco, cigars, and cigarettes have been increased (see Government Notice 512 of 1902, *Gazette Extraordinary* of October 8th, 1902).

No. 23 (Ordinances) amends Law No. 4 of 1894 regarding the manage-

ment of the customs of the Transvaal Colony. It contains provisions for the proper levying and payment of additional duties imposed under the new Ordinance and prohibits *inter alia* all goods of foreign manufacture, or any packages of such goods, bearing any marks or brands which purport to be the names, brands, or marks of manufacturers resident in the United Kingdom or any British possession. All duties shall be charged according to colonial weights and measures. The Governor shall have the power to declare which ports shall be ports of entry and export, and the roads and routes of conveyance.[1] The Governor shall also have the power to grant rebate on goods re-exported from the Transvaal Colony to any other colonial State or territory. The duties of importers for preserving invoices are set out and the duties of customs officers described. Rules are laid down for bonded warehouses and the storing of goods therein, and penalties provided for contravening the rules and regulations made by the Director of Customs for such warehouses. Further provisions are made for examinations and enquiries on oath to be made by the said Director, goods to be seized and forfeited, Courts which will hear cases under the Customs Ordinances, rules for the proceedings in suits for the recovery of penalties, for seizures of goods and their restoration by the Governor, and all general fines and punishments.

Liquor Laws.—No. 32 (Ordinances) amends Law No. 19 of 1898 regulating the sales of wines, spirituous and malt liquors. The different licences, wholesale and retail, to be obtained are specifically enumerated, the number of retail licences being limited to one for every 250 male inhabitants. The former Licensing Courts are maintained, as well as the jurisdiction of the resident magistrates and assistant resident magistrates for all offences under this Ordinance, which forms one of the extensions of the magistrates' jurisdiction[2] provided for in Proclamation Transvaal No. 21 of 1902.

No pay of wages to servants or workmen shall be allowed on licensed premises, and such premises shall be open for search by police officers, with the consent in writing of the resident magistrates. The provisions of Proclamation Transvaal No. 36 of 1901 regarding the prohibition of sale of liquors to the natives are consolidated with this Ordinance. This prohibition shall, however, not effect Kaffir beer containing less that 3 per cent. alcohol, if brewed on premises of any person or company employing more than fifty coloured labourers.

Liquor traffic inspectors and sub-inspectors shall be appointed whose duty it will be, with the assistance of a special detective police force, to see that the provisions of this Ordinance be carried out. Resident magistrates

[1] Exercised as to ports of entry and export by Proclamation Transvaal No. 8 Admn. 1902, dated October 4th, 1902 (*Gazette* of October 8th, 1902).

[2] The other extension is under Law No. 4 of 1891 for the prevention of stock thefts and the protection of owners of cattle.

may restrict the sale of liquor for certain periods to persons thrice convicted of drunkenness and certain other individuals. Local option shall be introduced—*i.e.*, the sale of liquor shall be totally prohibited in any village, town, or ward of a municipality if so decided by the majority of the male white population above twenty-one years. Such sale can by the same majority be placed under the exclusive control of any local authority, company, or association formed with the object of devoting any profits made to some public purpose.

Prisons.—Nos. 30 and 36 (Ordinances) provide for the appointment of a governor and deputy governor of the Johannesburg and Pretoria prisons.

Martial Law.—No. 38 (Ordinances) withdraws martial law from the Colony from and after "the date of this Ordinance taking effect," and provides indemnity for all acts in good faith advised, ordered, and done by or at the instance of the Governor, Lieutenant-Governor, or the officer for the time being commanding His Majesty's forces, and confirms all sentences pronounced by military Courts, all arrestations made for high treason, and recognisances taken during the existence of martial law.

The second part contains special provisions for public safety by allowing persons reasonably suspected of having committed treason to be arrested without warrant, buildings on reasonable suspicion of containing documents of a seditious or treasonable character to be searched, letters to be opened, and stating the penalties for speaking seditious words, doing riotous acts, publishing seditious libels, or being part to seditious conspiracies. Permits for entrance into the Colony remain to be required, except by those who are specially exempted, and persons found to have entered the Colony without lawful authority as well as persons considered dangerous may be directed by the resident magistrate of the district in which he resides to leave the Colony.

Concentration Camps.—No. 39 (Ordinances) authorises the Lieutenant-Governor to maintain concentration camps during a further period of six months, and provides for the removal of military structures.

Expropriation of Lands.—No. 5 (Proclamations) regulates the acquisition by the Governor of property of private persons within the Colony for public use by voluntary or compulsory sale, and the compensation to be given for the same—such compensation to be mutually agreed upon between the parties, or otherwise to be settled by arbitration.

Crown Lands.—No. 40 (Ordinances) creates a Land Department and Land and District Commissioners, to be assisted by Land and District Boards respectively, for the disposal of Crown lands by public auction and private sales. Rights to minerals and mineral properties shall be reserved for the Crown in any case.

Land Settlements.—No. 45 (Ordinances) entitles the Lieutenant-Governor to set apart portions of Crown lands for allotments to applicants who require lands for their own use and will reside on them, either under

licence at a valued price (the purchase money being payable by sixty half-yearly instalments) or under lease for five years. All rights to minerals and mineral products are reserved, but the licensee or lessee shall be bound to cultivate his holding and to plant trees. He shall be under inspection of the Land Commissioner. After the expiration of the licence and fulfilment of the stipulated conditions, the licensee shall be able to obtain a Crown grant. Advances shall be made to sellers under certain conditions. Among the applicants, those who shall have served as members of the South African Constabulary or in any of His Majesty's forces for not less than twelve months shall have preference.

Naturalisation.—No. 46 (Ordinances) attaches the capacity of becoming naturalised to a residence in the Transvaal or service of the Crown for a period of five years within such limited time as shall be fixed by the Lieutenant-Governor. Proof of residence shall be given by the resident magistrate or the justice of the peace. By Government Notice 170 of 1902 (*Gazette* of February 27th, 1903), such limited time was fixed by the Lieutenant-Governor at ten years.

Central South African Railways.—No. 25 (Ordinances) gives power to the Lieutenant-Governor to from time to time frame by-laws for the regulations of the management and working of the Central South African Railways, and maintains the rules and regulations at the time in force between the South African Republic and the Nederlandsche Zuid Afrikaansche Spoorweg Maatschappy (Netherlands South African Railway Company).

Cattle Diseases.—No. 17 (Ordinances) provides regulations against the spread of Rhodesian red water among stock in the Transvaal.

Game.—No. 29 (Ordinances) re-enacts the provisions of Act No. 5 of 1894 for the preservation of game with certain amendments, and leaves it to the Lieutenant-Governor to fix the close time session for any district.

Protection of Cattle.—No. 35 (Ordinances) prohibits the slaughtering of cows, heifers, and calves, and the sale of the meat thereof, during a period of two years.

Telegrams.—No. 48 (Ordinances) protects any newspaper telegrams from publication within seventy-two hours.

Newspapers.—No. 49 (Ordinances) provides for the registration of newspapers at the office of the Colonial Secretary.

VI. WEST AFRICA.

[*Contributed by* Albert Gray, Esq.]

1. GAMBIA.

Ordinances passed—21.

Public Health.—Large powers are given to the Governor to make regulations with respect to matters of sanitation (No. 1). The powers include many of those given in our Public Health Acts, and therefore too familiar to require notice. The progress of science in relation to tropical life is, however, seen in the references to mosquitos. Provision may be made for the removal, covering up, etc., of drains, pools, swamps, etc., which are "capable of becoming breeding places for mosquitos or other noxious insects"; for the cleansing, building up "on proper principles" of existing wells; also for the "covering with wire gauze lids, close pumps, or other contrivances of all wells."

West Africa Frontier Force.—No. 3 is an Ordinance for the establishment of a Gambia company to form part of the Frontier Force. It follows the Gold Coast and the Sierra Leone Ordinance of 1901.[1] Some amendments are made by a subsequent Law of the same Session (No. 9).

Public Lands.—The preamble of No. 5 recites that it is expedient to repeal the Public Lands Ordinance of 1897, and to "declare more clearly the law in conformity wherewith grants and dispositions of public lands shall in future be made." Power is given to the Governor to make grants of public lands "in such manner and subject to such conditions as may be required." They are to be under the public seal of the Colony, and "expressed to be made in conformity with the provisions of the Ordinance." Rules may be made by the Governor (s. 4) for securing due care in the making, execution, and recording of grants; making surveys of public lands for sale; regulating auction sales; providing for the payment of purchase price or rents. Provision may also be made by the rules (*a*) for reserving out of public lands so granted such portions or spaces as may be necessary for the construction of roads or other public purposes; and (*b*) for resuming for public uses any lands granted or disposed of under the Ordinance, and for providing compensation for the resumption.

These last provisions may give rise to some difficulty. The Ordinance does not provide that the rules are to run with the land, and therefore it seems uncertain why these provisions are contained in the rule-making power, and not left to be dealt with in the particular grants. Moreover, the pro-

[1] See Journal, N.S., No. 10, pp. 310, 314.

vision as to compensation is confined to (*b*), and therefore the road reservations referred to in (*a*) must mean such reservations and under such conditions as may be made in the particular grants. If we may assume that the references to resumption for public purposes are intended to avoid the necessity in each case of a special enactment authorising the resumption, would it not have been better to enact expressly that all lands granted under the Ordinance are to be subject to such resumption on payment of compensation?

Protectorate.—Legislation with respect to the Protectorate system of this Colony has already been noticed in this journal.[1] The conveniences of the Protectorate system have led to its application to the less civilised portions of the Colony; and one can well understand how unsuited to the African jungle are the documentary weapons of English law—its writs, pleadings, recognisances, etc. The Protectorate system, under which justice reverts to older and simpler modes, has already been applied to the following districts of the Colony: Brejet and Bajana, McCarthy's Island and the Ceded Mile. An Ordinance of 1903 (No. 7) repeals the existing special laws, and applies the system, not only to the foregoing districts, but also to British Kommbo. The new Ordinance, moreover, extends to a newly protected territory called Fulladugu. Under the Protectorate system, the whole territory may be divided by the Governor into districts, a hierarchy of native chiefs may be constituted, armed with considerable power, but subject to removal by the Governor.

The Supreme Court of the Colony and the Police Magistrate at Bathurst have jurisdiction throughout the Protectorate; but all minor cases will be dealt with by the Native Tribunals, which are constituted either of three native members or of the British Commissioner sitting alone or with one or more native members. In civil matters, the Native Tribunal has the same jurisdiction as the Court of Requests at Bathurst. In criminal cases the powers are fairly wide, including the punishment of thefts, burglary, and perjury. It can award six months' imprisonment with hard labour, and whipping in the case of juvenile males.

A distinction is made between the districts which are part of the Colony and those which are in fact "protected" only. A native of any of the former districts may claim to be tried by the Commissioner. The same right is given to white men in every district.

Written process is not required in the procedure of native tribunals; all summonses, warrants, or other process "may be served or executed by an authorised messenger of a head chief," who may also prove a committal by his oath.

Patents and Trade Marks.—A person who has applied for protection for any invention in the United Kingdom or in any foreign State with which mutual arrangements exist is to be entitled to a patent in the Colony in

[1] Journal, vol. ii., p. 209; N.S., No. 1, p. 132.

priority to other applicants; provided that his application is made within twelve months after his application in the United Kingdom or foreign State (No. 13).

A similar provision is made with respect to trade marks (No. 14).

Flogging.—A short Ordinance (No. 16) deals with sentences of flogging. It follows what is presumably a model form.[1]

Protection of Illiterates.—A law (No. 17) following that of Sierra Leone (No. 5 of 1898) provides that any person who writes a letter or other document for an illiterate person must also write thereon his own name and address, which is to be deemed an assurance that he was instructed to write the letter or document, and that it correctly represents his instructions, and that before being signed by the illiterate it was read over and explained to him. Penalties are provided for contravention of the law.

2. GOLD COAST.

Ordinances passed—15.

Ashanti and Northern Territories.—The only legislation of this Colony which deserves special notice consists of the Ordinances passed in relation to these new dependencies. Ashanti was annexed to the King's dominions by Order in Council of September 29th, 1901. It was not made part of the Gold Coast, but is administered by the Governor of the Colony, and more immediately by a Chief Commissioner. Laws for Ashanti are to be made by the Governor himself by Ordinance, subject to disallowance by His Majesty.

The Northern Territories, which are the territories bounded on the west and north by the French possessions, on the east by the German possessions, and on the south by the parallel 8° N., are on the other hand treated as a protectorate under the Foreign Jurisdiction Act. Their administration is also confided to the Governor by an Order in Council of September 26th, 1901, the provisions of which are almost identical with those of the Ashanti Order.

Under these powers the Governor has passed four Ordinances for Ashanti and three for the Northern Territories. In both cases the territories are divided into districts for administrative and judicial purposes, provision being made for an appeal to the Supreme Court of the Colony. In aid of this appeal, the Gold Coast Legislature have passed an Ordinance (No. 1) for the regulation of the appeals.

Another of the Governor's Ordinances makes provision for the construction and maintenance of a railway in Ashanti.

[1] See under head of Gibraltar.

3. LAGOS.

Ordinances passed—25.

Native Labour.—An important Ordinance regulates the engagement of native labourers (No. 3). It leads off with a provision that no native labourer is to be engaged for service outside His Majesty's dominions without the express sanction of the Secretary of State—a measure of centralisation probably without parallel. And all the while there is a Governor with an Executive Council at Lagos!

When the sanction of the Secretary of State has been duly obtained in Downing Street, the native is still unable to leave his home for service outside the Colony unless he obtains the consent of the chief of his district, to be certified by the District Commissioner. Nor must the Commissioner grant this certificate unless he is satisfied that the native is physically fit, that he is not leaving wives or children without support, that he is not breaking existing obligations imposed by contract or native law, and that he is above sixteen years of age.

A person desiring to engage labourers for service outside the Colony must apply to the Colonial Secretary (of the Colony) for a permit, which remains in force for three months only. Security for the payment of the wages may be required, unless the application comes from the Government of a British possession.

The contract in the case of each labourer must be entered into in the presence of a police magistrate. It remains in force for thirteen months, and, within a fortnight after the expiration of the service, the employer must provide the labourer with a home passage to his port of embarkation. The provisions as to contracts are accompanied by stringent penalties for contraventions.

The point at which the sanction of Downing Street should be obtained is left somewhat in the air. It is provided for in s. 1 of the Ordinance, from which it would appear to be a condition precedent. But in s. 6 the police magistrate before endorsing the contract is not required to be satisfied as to that sanction, though he is required to have the certificate as to the consent of the native chief and of physical fitness, etc.

Pensions.—The only provisions of a general Pensions Ordinance (No. 4) which call for remark are those applicable to European officers. The pensionable age (fifty-five) is for them reduced to fifty, and an officer who has served eighteen years, of which not less than twelve have been residential, is to be "regarded as having attained the age of fifty-five years." An officer who attains the age of fifty-five may be compulsorily retired.

Administration.—The real property of any person dying after the passing of Ordinance No. 18 is to be deemed for purposes of administration to be part of his personal estate. The real estate is, however, not to be

administered unless the personal estate is insufficient to pay the intestate's debts, funeral and testamentary expenses. There is also a saving for real property which by native law or custom cannot be affected by testamentary disposition.

Supreme Court.—Difficulties have hitherto been experienced owing to the Supreme Courts in West Africa becoming short-handed by reason of the absence or illness of the judges. For a remedy, a system is being inaugurated of making the Supreme Court judges of the several Colonies interchangeable. Thus, in the case of Lagos (Ordinance No. 24), the judges of the Gold Coast, Northern and Southern Nigeria, are all made puisne judges of the Supreme Court of Lagos. The Chief Justice of Lagos of course presides; after him the precedence is as follows: the Chief Justices of the other Colonies according to priority of appointment, then the other puisne judges in order of appointment. Acting judges take rank after those holding permanent appointments.

Sale of Drugs and Poisons.—The sale of drugs is regulated by No. 8. A person may not retail drugs or poisons unless he is annually licensed by the Chief Medical Officer, and registered. The Ordinance is on the lines of the English Pharmacy Acts.

Forestry.—A Forestry Department is created by Ordinance No. 14. Power is given to the Governor to prohibit the cutting of timber or tapping and collecting of rubber in any forest reserve or any Crown forest. He can also make rules and regulations for the issue of licences to cut timber, and generally for the management of Crown forests.

4. SIERRA LEONE.

Ordinances passed—21.

Mohammedan Education.—Ordinance No. 4 recites that it is expedient for the development of "education on Western lines" among the Mohammedans of the Colony to create a Department of Mohammedan Education. A Director is to be appointed, who may establish such schools as he may think fit, which are to receive grants in aid from the public funds. The schools must be vested in managers, and the head teachers must be approved by the Director.

Commutation of Sentences.—Whenever the Governor grants a pardon to a person convicted of a capital offence, on condition of imprisonment, the pardon and conditions are to be certified to the Chief Justice, who is to make an order accordingly. The order is to be certified by the Clerk of the Crown to the keeper of the prison. Similar procedure applies to absolute pardons for offences other than capital.

Concessions.—Authority is given (Ordinance No. 8) to the Supreme Court to try the validity of concessions of land granted by natives. The Law follow

with some modifications the Gold Coast Law of 1900 (noticed in our "Review" for that year), as amended by the Law of 1901.[1]

The new Law applies to the Protectorate as well as to the Colony.

Colonial Stock.—The same provisions with respect to securities issued by the Sierra Leone Government are made by Ordinance No. 10 as have already been made by the Gold Coast Law of 1901.[2]

Fires.—A fire brigade is constituted for Freetown under a superintendent. At a fire the officer in charge is empowered to pull down houses in order to arrest the progress of the fire.

West African Frontier Force.—The Ordinance of 1901 noticed in our last year's "Review"[3] is amended in some particulars, principally as to gratuities and as to pensions of men who have already served in the police force.

5. SOUTHERN NIGERIA.

Proclamations passed—18.

Adulteration.—In 1894, while Southern Nigeria was under Foreign Office jurisdiction, Queen's Regulations were passed to check the adulteration of the country produce—palm oil, kernels, and rubber. These Regulations have been found efficacious, and their provisions are now extended and amended by Proclamation No. 3. Questions as to adulteration are settled by the evidence of "produce experts," who may be summoned from a list of qualified persons made by the Commissioner. Their reports are to be deemed "sufficient evidence" unless the defendant requires them to be called witnesses.

Police.—A civil police force is constituted under Proclamation No. 4. Its provisions do not call for special notice, except that which provides that the police force may be called upon to serve with any military force, and during active service is to be under military law.

Statute Law Revision.—Although this Protectorate has had only two years of legislation under a High Commissioner with full powers, a time has arrived when it is thought expedient to issue a revised edition of the Proclamations in force, together with a chronological table of Queen's Regulations and an index.

Much credit is due to the late High Commissioner, Sir R. Moor, not only for thus aiding a general knowledge of the law, but also for the form in which the Proclamations of the year are published. Alone among the West African Colonies, Northern Nigeria issues its laws in a bound volume, comprising also Rules and Orders and *Gazette* Notices.

[1] See Journal, N.S., No. 3, p. 381; No. 10, p. 311.
[2] See Journal, N.S., No. 10, p. 310.
[3] See Journal, N.S., No. 10, p. 314.

Native Currency.—It seems that the tokens of currency most in use are brass rods, either bent or straight, and "manillas" (bracelets). Four brass rods are reckoned equal to a shilling. Of manillas there are five descriptions, the best of which are current at the rate of four to the shilling, the inferior ones at the rate of sixteen to the shilling. By Proclamation No. 14 the Government seems to wish gradually to get rid of this currency, the Commissioner having power to prohibit its importation. Brass rods may be imported for other purposes, but under certain safeguards.

Supreme Court.—A law corresponding to that of Northern Nigeria provides for the judges of that Protectorate and of Lagos sitting on the Southern Nigeria bench.

European Reservations.—Power is taken (No. 16) for the Commissioner to acquire areas to be reserved for European habitation and for the governance of these areas by Boards of Health.

Mining.—Proclamation No. 18 is a Mining Law on the model now familiar in Africa, with provisions for prospecting and for mining under leases. Where the land belongs to a native community, the leases must be obtained from the native chiefs, but there is an appeal from their refusal, in cases where the Supreme Court is of opinion that the refusal of the chiefs is detrimental to the interests of the community. It is hoped that the peaceable working of the lease may be secured by the provision imposing penalties on any chief or native priest who represents any land so leased to be affected by "ju-ju."

6. NORTHERN NIGERIA.

Proclamations passed—20.

Spirituous Liquor.—A Proclamation (No. 1) has been made to give effect to the provisions of the Brussels Convention. It is made an offence to give or sell liquor to a native, except in case of sickness; it is also an offence for a native to possess it. Persons selling liquor to non-natives must be licensed.

Customs.—Two Proclamations (Nos. 2 and 3) deal with Customs Department and tariff respectively. The tariff is a short one. There are special duties on wines and spirits and tobacco, and certain other things. All other goods pay an *ad valorem* duty of 10 per cent., except the goods mentioned in a table of exemption which seems to be fairly generous.

Minerals.—The general conditions under which persons may prospect for and work minerals are prescribed by Proclamation No. 5. There are licences for prospecting and licences for working. As to the latter, the maximum area for a licence is five square miles. A person may apparently hold several licences, but the maximum area must not in that case exceed twenty square miles. The maximum period is ninety-nine years. A

percentage of profits is payable to the Government, but the rate is not yet fixed.

Supreme Court.—It has been found convenient to reconstitute the Supreme Court so as to form a sort of joint Court for the two Nigerias. Thus, in the Northern Nigeria Proclamation (No. 6), the Supreme Court of that territory consists of the judges of both territories, the principal judge of Northern Nigeria to be Chief Justice. The jurisdiction and procedure of the Court are dealt with in detail in the Proclamation, with appended Rules of Court.

Provincial Courts.—Another Proclamation (No. 9) makes similar provisions for the procedure in Provincial Courts, also accompanied by a schedule of rules.

West Africa Frontier Force.—A Proclamation (No. 10) creates a Northern Nigeria Regiment to constitute part of this force. The law is similar to those of the other West African Colonies.

Public Lands.—The High Commissioner may by writing under his hand declare to be public lands "all lands not in the actual occupation of persons having an original or derivative title to such lands under any Proclamation," or under any law or custom, also lands belonging to any conquered or deposed ruler. All public lands are to be in the management of the High Commissioner.

Departmental Offences.—A law (No. 14) which enables heads of departments to try summarily and fine subordinate officers of their staff (earning not more than £180 per annum) for breach of regulations or orders, or for misconduct, is not one which is likely to be taken as a precedent in countries more settled than Nigeria. The power to fine extends only to twenty shillings, and the head of the department has to give the High Commissioner a monthly return of fines inflicted by him, together with a full statement of the offences. Having regard to the conditions of the country, the law seems to be a good one. The High Commissioner is authorised to make rules for regulating the practice under the new law. Probably a good rule would be that the head of department should always take a night to consider a case before he imposes a fine. The chief danger of a paterfamilias with punitive powers is sudden resentment of disobedience.

Murder by Foreigners.—A curious precedent is made by Proclamation No. 17. It appears that three Frenchmen murdered three persons in Nigeria. They were arrested by the French authorities in Felingue, and surrendered to the High Commissioner for trial. Found guilty before the Supreme Court, they were condemned to death. At this juncture the French Government represented that the prisoners had been surrendered without due authority, and requested that they should be delivered over to the authorities at Dahomey, giving full assurances that they should be duly brought to justice. With these assurances the British Government was

satisfied; and accordingly the Proclamation authorises the surrender of the prisoners, suspends *habeas corpus*, etc.

Unsettled Districts.—The Protectorate has quite lately been the scene of warlike operations, and temporary measures are needed to allow native ferment to subside. The High Commissioner may (No. 19) declare any portion of the Protectorate to be an unsettled district, and thereupon it becomes unlawful for any "non-native" to enter that district without a permit from the High Commissioner.

Native Labour.—This question is dealt with on somewhat different lines from those adopted in Lagos. Permits to engage labourers for service beyond the Protectorate are granted by the High Commissioner, without any reference to Downing Street. The native labourer is, however, safeguarded by requirements that the contract of service must be entered into before the Resident of the Province; capitation fees must be paid, and the Resident must be satisfied that the labourer is not leaving his family without support or evading existing obligations. Contracts of service are only binding for eighteen months, but if the term expires during a journey, it may be prolonged for one month. Payment may be made in money or, if so agreed, in kind.

The law makes provision also for apprenticeship within the Protectorate. Apprentices may not be taken out of the Protectorate except with the authority in writing of the Resident of the Province.

All disputes between master and servant are to be settled by the Court.

The law contains a schedule of useful rules with respect to carriers, and also as to the enforcement within the Protectorate of contracts of service made elsewhere.

VII. SOUTH ATLANTIC.

FALKLAND ISLANDS.

[*Contributed by* Henry E. Gurner, Esq.]

Ordinances passed—8.

Summary Jurisdiction.—No. 5, in addition to the usual sections, contains one (s. 24) giving power to the Court to sit with closed doors at the preliminary investigation when the offence charged is one alone triable before the Supreme Court, and when the Court is of opinion that the ends of justice will be best answered by making such an order. S. 35 provides a sliding scale of fines and of terms of imprisonment which may be imposed instead of such fines; for instance, when the fine imposed does not exceed 10*s.*, imprisonment not exceeding one week may be given in lieu

thereof; and when the fine exceeds £50, a period not exceeding one year may be imposed. By s. 45 a person may be fined a sum not exceeding £5 for catching, riding, or using a horse without the authority of the owner.

S. 49 deals with offences within the town of Stanley. One of such offences is for a person under the age of fourteen to have in his possession any firearms or ammunition; and in such case it is made lawful for the justice to direct him to be privately whipped, and the justice may also order some fit and proper person (to be selected by such justice) to inflict the punishment when such whipping is ordered to be inflicted out of prison. Another offence is, being the owner or keeper of any bitch on heat, to allow her to be off the chain or not shut up in some secure place. S. 70 gives the Chief Justice power to make rules for putting the Act into force.

Pilots (No. 6).—This Ordinance consolidates and amends the law relating to pilots. By s. 29 it is made an offence punishable by a fine not exceeding £100 for a pilot to keep or be interested in keeping a public-house or place of public entertainment, or to sell wine, beer, or other intoxicating liquors or tobacco.

Marriage (No. 8).—The Marriage Ordinance provides by s. 6 that every minister of religion or head of any religious denomination may apply to be registered as a minister for celebrating marriages, and the Governor has the right to refuse his application; and it further directs that a list of such persons shall be published annually in the *Gazette*. By s. 7 no person shall solemnise a marriage until three months after the date of the marriage licence or publication of banns or in any building with closed doors or before eight in the morning or after six in the evening. By s. 8 the Governor may grant a special licence by which a marriage may be celebrated at any time or place. By s. 9 Christ Church Cathedral, the Roman Catholic Chapel, and the Baptist Tabernacle are deemed to be registered as places for celebrating marriages, and the Governor is permitted to grant a certificate of registration for other places commonly used for religious purposes. By s. 11 it is provided that marriages may take place before a registrar at any time after three months from the date of the issue of the licence. By s. 15 the consent is required of the father or guardian, or, if there be no guardian, of a person authorised in that behalf by the Chief Justice, for the marriage of a minor (defined as being a person under twenty-one years of age), and the Registrar-General shall not enter a notice of marriage until such consent has been first obtained, providing that either party can petition the Supreme Court as to the withholding of such consent; and s. 17 provides that the Chief Justice shall enquire into and determine the case in a summary manner, giving directions to the registrar accordingly. By s. 16 any one may enter a *caveat* against the issue of a marriage licence by writing "forbidden" upon the notice of marriage and signing his name.

He must serve upon the Registrar-General a notice giving the grounds of his objection, and in such case no licence is to be granted without the consent in writing of the Chief Justice. By s. 18, if the Chief Justice declares the *caveat* to be frivolous, damages and costs may be recovered by either of the contracting parties by an action on the case.

By s. 22 no marriage shall be deemed to have been unduly celebrated by reason of a defect in error in the declaration made where the identity of the parties is not in question, nor is it necessary in support of any marriage to give proof of the consent of any person whose consent was necessary, nor shall evidence be given to prove the contrary in any suit touching the validity of such marriage.

VIII. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.

Contributed by J. A. Simon, Esq.]

Acts passed—Public General, 37; Local and Private, 78.

Bills of Exchange.—No. 2 makes a slight modification in the Bills of Exchange Act, 1890, which reproduced the Imperial Act of 1882 with a few changes (the most notable the cutting down of the protection afforded by English law to a banker who pays a cheque on a forged endorsement to cases in which the drawer fails to give notice of the forgery for a year after he discovers it—contrast s. 24 of the Canadian Act with s. 60 of the Imperial Act). The present alteration concerns time of acceptance. S. 42 of the English Act requires a bill to be treated as dishonoured by non-acceptance, unless accepted "within the customary time" after due presentation. The corresponding section in the Dominion Act of 1890 required acceptance "on the day of presentment, or within two days thereafter," and this section is now repealed and re-enacted in an altered form with the additional provision entitling the holder of a bill payable at sight or after sight to treat it as dishonoured by non-acceptance unless the acceptance is duly dated.

Coasting Trade.—No. 7 repeals No. 83 of the Revised Statutes, and enacts stringent provisions intended to prevent foreigners from sharing in the coasting trade of Canada. By s. 3 "no goods or passengers shall be carried by water, from one port of Canada to another, except in British ships"; and by s. 2 no foreign-built British ship (unless registered as a British ship before September 1st, 1902) may engage in the coasting trade

of Canada until provided with a licence obtainable from the Minister of Customs by payment of "a duty of 25 per cent. *ad valorem* on the fair market value of the hull, rigging, machinery, boilers, furniture, and appurtenances of such ship."

Expert Witnesses.—No. 9 imposes a curious limitation upon the multiplication of expert testimony as follows: "Where, in any trial or other proceeding, criminal or civil, it is intended by the prosecution or the defence, or by any party, to examine as witnesses professional or other experts entitled according to the law or practice to give opinion evidence (*sic*), not more than five of such witnesses may be called upon either side without the leave of the Court, or judge or person presiding, such leave to be applied for before the examination of any of the experts who may be examined without such leave."

Marking of Fruit.—The elaborate code contained in the Fruit Marks Act, 1901, already needs amendment, and by No. 12 not only has every closed package of fruit to be stamped by the packer with a mark indicating whether it is of first, second, or third quality, but the time-honoured practice of "putting the biggest apples at the top" is to be suppressed by an inspector armed with power to stamp the legend "Falsely Packed," "in a plain and indelible manner on the package."

Game Preservation.—No. 12 prohibits the hunting of buffalo and bison in the unorganised territories till 1907, and appoints the members of the North-West Mounted Police Force to be *ex officio* gamekeepers to enforce the observance of this close-time.

Immigration.—No. 14 adds to the existing Immigration Act a section prohibiting the landing in Canada of any person suffering from any loathsome, dangerous, or infectious disease.

Joint-Stock Companies.—No. 15 is an important new code of company law, containing ninety sections and a schedule of forms. By s. 5 the Secretary of State may by letters patent grant a charter of incorporation to any number of persons not less than five for any purpose within the legislative authority of the Dominion Parliament, *except* the business of railway, telegraph, telephone, banking, insurance, or loan companies. The liability of shareholders is limited to the amount unpaid on their shares, but (by s. 31) to this extent each shareholder is individually liable to the creditors of the company, and he may be sued by any creditor whose debt remains unsatisfied after execution against the company. There appear to be no provisions for winding-up, but the charter is forfeited by three years of non-user (s. 19). The directors are to be not more than fifteen nor less than three in number (s. 60). If directors declare a dividend when the company is insolvent, they become liable for the debts of the company (s. 69). They are jointly and severally liable for six months' wages to the company's servants whose execution against the company is returned unsatisfied (s. 71). The minimum subscription is 10 per cent. of the

authorised capital (s. 18). Existing companies, whether Canadian, British, or foreign, may avail themselves of the Act (ss. 11-13).

Grain Trade.—No. 19 amends the Manitoba Grain Act, 1900, in certain particulars.

Medicine.—No. 20 provides for the establishment of a Medical Council in Canada, with disciplinary and educational functions, so that there may be one standard of medical qualification maintained throughout the Dominion.

Penalties.—No. 26 empowers the Governor in Council to remit any pecuniary penalty, fine, or forfeiture imposed by any Canadian Act.

National Park.—No. 31 enlarges the boundaries of the national park which was established in the North-West Territories by the Rocky Mountains Park Act, 1887.

Customs Tariff.—No. 33 amends the Customs Tariff, 1897, by adding to Schedule B rifle-making machinery and materials and charcoal-making machinery.

Yukon Territory.—Nos. 34-37 modify existing constitutional arrangements for the Yukon Territory, which has now sufficiently developed to become an electoral district and to return one member to the Dominion House of Commons (the Yukon Territory Representation Act, 1902, No. 37).

2. BRITISH COLUMBIA.[1]

[*Contributed by* WALTER PEACOCK, ESQ.]

Acts passed—79.

Creditors' Relief.—The Creditors' Relief Act, 1902 (No. 17), provides that there shall be no priority among execution creditors. Where a sheriff has levied money upon an execution against the property of a debtor, he shall enter notice thereof in an official register; and the money shall thereafter be distributed ratably amongst all execution creditors and other creditors whose writs or certificates given under this Act were in the sheriff's hands at the time of the levy, or who shall deliver their writs or certificates to the sheriff within one month from the entry of notice.

Persons to whom wages are due by the execution debtor shall be entitled to be paid not exceeding three months' wages in priority to the claims of the other creditors, and shall be entitled to share *pro rata* with such other creditors as to the residue of their claims.

Municipal Elections.—The Municipal Elections Act Amendment Act, 1902 (No. 20), amends the principal Act (R.S. B.C., No. 68) with regard to the qualification of voters.

[1] The Session commenced on February 20th, and ended on June 21st. Of the Acts passed, seventy-six are classed as public, and three as private.

Provincial Elections.—The Provincial Elections Act Amendment Act, 1902 (No. 21), amends the principal Act (R.S. B.C., No. 67) with regard to the appointment and duties of collectors.

Evidence.—The Evidence Act Amendment Act, 1902 (No. 22), amends the principal Act (R.S. B.C., No. 71) with regard to the production of certified copies of documents deposited or registered in the Land Registry Office, Land Titles Office, and Registries of the Supreme Court and County Court, as *prima facie* evidence without proof of the signature of the Registrar, or that the document was so deposited or registered. Any person to whom an oath is administered may swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland.

Fisheries.—The British Columbia Fisheries Act, 1901, Amendment Act, 1902 (No. 26), re-enacts certain clauses of the principal Act dealing with the appointments of a Fishery Commissioner, overseers, etc., fishery leases and licences. Every person working a cannery shall pay three cents per case upon all fish put into cases during the twelve months, and one dollar per ton on dried or salted dog salmon, and one dollar and twenty-five cents per ton on all other fish so preserved.

No. 29 provides for the amalgamation of the cities of Grand Forks and Columbia.

Hospital.—The Hospital Act, 1902 (No. 33), provides that no aid shall be paid to any hospital which has not been approved by the Lieutenant-Governor in Council. The amount of aid to be paid is regulated by a scale based upon the total number of days' treatment in a year.

No money is to be paid to any hospital where small pox patients are admitted, unless it is certified to have a distinct and separate ward or building for the exclusive accommodation of patients with small-pox.

Immigration.—The British Columbia Immigration Act, 1902 (No. 34), renders unlawful the immigration into British Columbia of any person who shall fail himself to write out and sign in the characters of some language of Europe an application to the Provincial Secretary.

Mutual Fire Insurance.—The Mutual Fire Insurance Companies Act, 1902 (No. 35), provides for the incorporation of mutual fire insurance companies with powers to sue and be sued under the corporate name, to purchase, lease, convey, or mortgage any real or personal property required for the business of the company, to invest funds on mortgage of real estate or in provincial or municipal bonds or other securities, to appoint officers of the company, and to make by-laws not inconsistent with the Act. Such powers are forfeited if there are not within one year from the date of incorporation, except for the purpose of winding up, mutual insurance policies in force to a total amount of $300,000, or at any time that such insurance policies shall have become less than $300,000, or on the company becoming insolvent.

Labour Regulation.—The Labour Regulation Act, 1902 (No. 38), prohibits

the employment on works carried on under franchises granted by private Acts of any workman who shall fail himself to read this Act in a language of Europe.

The Subsidised Works Labour Regulation Act, 1902 (No. 39), provides that subsidies shall not be paid until an agreement has been executed and security furnished by the employer as to the employment of labour upon such terms and conditions as to the Lieutenant-Governor in Council shall seem meet and proper.

Master and Servant.—The Master and Servant Act Amendment Act, 1902 (No 44), provides that in cities of more than three thousand inhabitants an employer of labour shall accede to a request in writing by thirty or more of his workmen to deduct from their wages a sum to provide for medical attendance by a practitioner whom each may select, and no other sum shall be deducted from the wages of a workman by a master for medical attendance.

Minerals.—No. 46, which amends the Mineral Act (R.S. B.C., No. 135), permits adverse rights under the Act to be tried by jury.

The Iron Placer Act, 1902 (No. 49), enables the Gold Commissioner with the sanction of the Lieutenant-Governor in Council to makes leases of unoccupied Crown land for iron placer mining, and states the formalities to be observed by the applicant.

Youths' Protection.—The Youths' Protection Act Amendment Act, 1902 (No. 51), provides that liquor shall not be sold to youths under eighteen, instead of sixteen as heretofore, nor shall youths of such age be allowed to remain in bar-rooms. Tobacco must not be sold to nor must it be used on the public streets by youths under sixteen.

Aliens.—No. 53 prohibits aliens from voting at municipal elections.

Power Companies' Relief.—The Power Companies' Relief Act, 1902 (No. 56), enables power companies to exercise the powers set out in Part IV. of the Water Clauses Consolidation Act, 1897, without becoming specially incorporated under the provisions of such Act.

Railways.—The Railways Acts Amendment Act, 1902 (No. 57), repeals the clauses in fourteen Acts passed during 1901 incorporating railway companies which prohibited the employment of aliens on the said railways.

Redistribution.—The Redistribution Act, 1902 (No. 58), provides that for returning the number of members of the Legislative Assembly, the Province shall be redistributed into thirty-four electoral districts, the boundaries of which are defined in the Act. With the exception of Victoria City, which is to return four members, Vancouver City five members, and Cariboo two members, each electoral district will return one member. The former registers are to be cancelled from the coming into force of the Act.

Manufacture.—No. 61 is an Act to encourage the manufacture of steel rails in Canada, and provides that subsidised railways shall use rails and spikes manufactured in Canada: provided always that the necessary rails and spikes are procurable in Canada, at a price not greater than the open market price

in Great Britain or the United States for rails of a similar make and quality, with the current freight rates from the place of shipment to the place where required in British Columbia added thereto.

Live Stock Breeders.—The Live Stock Breeders' Protection Act, 1902 (No. 62), provides for the registration in the Department of Agriculture of certificates of breeding of any live stock, comprising horse, mare, bull, or cow, and the publication of certificate shall be necessary to enable an owner who has advertised to collect any fees for the services of male live stock.

Assessment.—The Assessment Act Amendment Act, 1902 (No. 64), exempts from taxation under s. 10 of the principal act (R.S. B.C., No. 179) annual gross output of placer and dredging mines to the value of $2,000.

Timber Measurement.—The Timber Measurement Act, 1902 (No. 65), provides for the appointment of a Supervisor of Log Scaling to supervise the official scalers appointed under this Act to scale timber on which royalty is due to the Crown; and penalties are inflicted for sawing unscaled timber.

Trade Unions.—No. 66 provides that no trade union shall be liable in damages for any wrongful act in connection with any strike, lock-out, or labour dispute, unless the members of such union or its governing body acting within the authority of the rules shall have authorised such wrongful act. Trade unions shall not be liable for communicating certain information and employing fair argument to induce workmen not to renew contracts nor for publishing certain information respecting strikes.

No. 69 is an Act for incorporating Vancouver General Hospital.

Public Works Wages.—The Public Works Wages Act, 1902 (No. 71), provides for the payment out of securities held by the Crown of wages of employees of contractors or sub-contractors in the construction of a public work who have made default in such payment.

Workmen's Compensation.—The Workmen's Compensation Act, 1902 (No. 74), provides for the liability of certain employers, comprising undertakers on or about a railway, factory, mine, quarry or engineering work, or on any building exceeding forty feet in height, to pay compensation to their workmen for injuries, provided that (1) the workman is disabled for at least two weeks from earning full wages at his usual work; (2) when the injury is caused by the personal negligence of the employer, the workman may at his option claim compensation under this Act, or take the same proceedings as were previously open to him; (3) where the injury is due to the serious misconduct or neglect of the workman, the compensation shall be disallowed. Contracting out is prohibited, but an employer may contract to substitute for the provisions of the Act the provisions of any scheme certified by the Attorney-General to be not less favourable to the general body of workmen and their dependants. The scale and conditions of compensation are contained in the first schedule to the Act.

Deceived Workmen.—The Deceived Workmen's Act, 1902 (No. 75), makes

it unlawful for any person doing business in the Province to entice workmen into the Province by deceptive representations as to condition of the labour market; and any workman who has so been enticed shall have a right of action for recovery of damages occasioned by such representations. On the other hand, it is unlawful by making deceptive representations to prevent an employer from obtaining the services of workmen.

Youthful Offenders.—The Youthful Offenders' Act, 1902 (No. 76), provides that a parent or guardian may be made responsible for the offences of children between the ages of seven and fourteen years. Instead of committing a child between such age on conviction to prison, the magistrate may commit him into the custody of some fit person.

3. MANITOBA.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—77.

Bankruptcy.—No. 2 provides that gifts in fraud of, or for preferment of, creditors are void, but assignments for the general benefit of creditors, if registered and published in the *Gazette*, are permitted. The proceeds of void transactions have to be distributed amongst the creditors as the Act directs; wages of workmen owing for three months or under take priority to the claims of ordinary creditors.

Real Property.—No. 43 in 168 sections amends and codifies the law of real property. The Act provides a new system of land registry to that provided by the Registry Act. The Province is divided into land titles districts each containing a land titles office; certificates of title are, with a few exceptions, an absolute bar to all actions of ejectment. Documents transferring land must contain an accurate statement of the estate, interest, or easement transferred, and a memorandum of all leases, mortgages, or encumbrances to which the same may be subject. Transfers must be registered and take priority from the time they were presented for registration. Trusts cannot be entered on the register unless they be in respect of church lands or under a will, in which case the will is deemed part of the certificate of title. Leases and mortgages can also be registered. An assurance fund is created to compensate persons wrongfully deprived of land by the default of any registrar.

Liquor Traffic.—No. 44 orders a vote of all electors to be taken to decide whether the Liquor Act should be brought into force. The result of the voting was: For enforcing the Act, 15,605; against, 22,464.

Appropriation.—Nos. 49 and 50 provide $1,471,598 for the expenses

[1] The Session commenced on January 9th, 1902, and ended on March 1st. Of the Acts passed, fifty-six were classified as public, but nine of these would be treated in the United Kingdom as local.

of the civil government and public service of the Province for the ensuing year.

Amending Acts.—The other public Acts of this Session are almost entirely confined to short amendments of previous Acts.

4. NEW BRUNSWICK.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—122.

Appropriation.—Nos. 1 and 2 provide $319,624 for the expenses of the government of the Province and the upkeep of roads and bridges.

Employers' Liability.—No. 11 provides compensation for injury to workmen. The amount of compensation is limited to three years' earnings or $1,500, whichever is larger. Workmen may in certain cases contract out of the Act.

The term "workman" does not include domestic servants, gardeners, miners, or lumberers, but means any railway servant, ship labourer, longshoreman, and any person being a labourer, servant, journeyman, artificer, or otherwise employed in manual labour or who works under a contract to execute any work or labour. Employers are not liable for defects in machinery, etc., unless such defects were not discovered owing to the negligence of the employer or of the person entrusted by him with the duty of surveying the machinery, etc.; or for the act of any person when acting in disobedience to the orders or by-laws of the employer; or when the workman knew of the defect or negligence which caused the injury and did not report it.

Amending Acts.—The majority of the Acts of this Session are confined to short amendments of previous Acts or are of a local character.

5. NORTH-WEST TERRITORIES.[2]

[*Contributed by* H. Stuart Moore, Esq.]

Ordinances passed—44.

Appropriation.—Nos. 1 and 2 provide $821,840 for the government of the Province for the ensuing year.

Land Drainage.—No. 6 empowers the Government to construct and maintain ditches for the improvement of roads. The cost of the ditch is to be paid by every road and parcel of land benefited by the drainage.

[1] The Session commenced on March 26th, 1902. Of the Acts passed, forty-four were public and thirty-three local. Of the public Acts, six would in the United Kingdom be classified as local.

[2] The Session commenced on April 16th, 1903, and closed on June 19th. Of the Ordinances passed, eighteen would be treated in the United Kingdom as local and private.

Company Legislation.—No. 13 provides machinery for the voluntary or compulsory winding up of companies. Its procedure is very similar to that in force in the United Kingdom. The assets of a company are to be applied first in satisfying the wages due for three months previous to the liquidation to employees other than directors of the Company, and then in satisfaction of the residue of wages owing and all other liabilities *pari passu*.

No. 14 requires that foreign companies which carry on business in the Province for gain must be registered, otherwise they are to have no right of action for the enforcement of their contracts. This Ordinance does not apply to companies which have no resident agent or representative and no warehouse, office, or place of business.

No. 15 relates to trust companies for executing the office of executor, trustee, guardian, etc. The Court may at any time order the investigation of the affairs of such companies.

Insurance.—No. 16 makes various changes in the law relating to insurance against fire. There are twenty-one statutory conditions which are deemed part of every fire policy. Variations of these conditions can only be enforced by an insurance company if a Court of law holds them to be just and reasonable.

Agriculture.—No. 24 declares that certain weeds are "noxious," and enacts that every owner of land, whether cultivated or not, must promptly destroy all noxious weeds when ordered by any inspector appointed under this Ordinance. If he fails to obey the orders of the inspector, he is liable to a fine of $100 and the cost of carrying out the order.

6. PROVINCE OF ONTARIO.

[*Contributed by* JAMES S. HENDERSON, ESQ.]

Acts passed—116, of which 73 were Local or Private.

Statute Law Revision.—No. 1 repeals the various enactments mentioned in the schedule, and in addition introduces numerous amendments of the Statute Law (see also No. 12 *infra*).

Devolution of Estates.—S. 4 enacts that the lands of a deceased person which have become vested in his heir or devisee under s. 13 of the Devolution of Estates Act shall remain liable for the deceased's debts as they would be if vested in the deceased's personal representative, and in the event of a *bona fide* sale thereof for value by such heir or devisee, he shall be personally liable for the deceased's debts to the extent of the proceeds of such lands, and in case the sale shall not have been *bona fide*, then to the extent of the actual value of the lands. S. 5 protects a *bona fide* purchaser for value without notice of debts. S. 6 provides that property over which a deceased

person has exercised by will a general power of appointment shall be assets for the payment of his debts. S. 7 abolishes lineal and collateral warranties at Common Law with all their incidents (see also No. 17 *infra*).

Gaming Debts.—S. 8 amends the Act 9 Anne, c. 19, by providing that all notes or other securities or conveyances given or executed where the consideration therefor is either in whole or in part money or other valuable thing won by gaming or playing at cards, dice, tables, tennis, bowls, or other game or games whatsoever, or by betting on the sides or hands of persons gaming at any of these games, or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting, or lent or advanced at the time and place of such play to any person so gaming or betting, are to be deemed to have been made for an illegal consideration. S. 9, which reproduces s. 2 of the English Gaming Act, 1835, provides that money paid to the holder of such securities shall be deemed to be paid on account of the person to whom such security was originally given, and be deemed to be a debt due from such person to the person who shall have paid the money, and be recoverable by action.

Mandamus.—S. 10 deals with the returns to be made to writs of mandamus. In the case of a false or insufficient return, the Court may order the person making such return to pay to the applicant for the writ such damages as may be occasioned by the return.

"*Quo Warranto*" *Proceedings.*—SS. 11-16 relate to these proceedings. The writ of *quo warranto* is superseded in most cases, and notice of motion where the proceeding is by the Attorney-General, or rule *nisi* in other cases, substituted. Where it is intended to call in question the right of municipal and school officers to hold office, the question is to be tried and determined in a summary manner by the County Court judge.

Proceedings by Crown.—S. 17 provides that no entry, distress, action, etc., shall be made or brought on behalf of the Crown after sixty years from the time when the right first accrued. S. 18 defines when the right of entry, etc., is to be deemed to have first accrued. Waste lands of the Crown are by s. 19 excepted from the provisions of ss. 17 and 18. S. 21 abolishes writs of extent and writs of extent in aid, and all other prerogative process for the recovery of debts due to the Crown or to Crown debtors, and makes these debts recoverable by the ordinary process.

Distress.—S. 22 amends s. 1 of 2 Wm. & Mary (2nd Session), c. 5, so far as operative within the Province, by enacting that no goods distrained shall be sold till five days after distress and appraisement.

Mortmain and Charitable Uses.—No. 2—the Mortmain and Charitable Uses Act—is practically a reproduction, with the necessary alterations to make it applicable to the Province, of the English Mortmain and Charitable Uses Act, 1888. It provides also by ss. 12 and 13 that where there has been a breach or supposed breach of a charitable trust, two or more persons may by petition signed by them in the presence of, and attested by, their solicitor,

and certified by the Attorney-General of the Province, bring the matter before the Court, which may hear and dispose of same in a summary way.

Electoral Divisions.—No. 4 divides the Province into ninety-seven electoral divisions instead of ninety-three, the number fixed by previous legislation.

Voters' Lists.—No. 5 amends the Ontario Voters' Lists Act as to the time within which the voters' lists are to be prepared (see also No. 12 *infra*).

Manhood Suffrage Registration.—No. 6 amends in certain details the Manhood Suffrage Registration Act. S. 4 provides that the bribery clause in the oath administered to a person applying for registration is only to be included where the agent for a candidate or political organisation or the registrar deems its insertion expedient.

Elections.—No. 7 provides for additional polling places where the voters exceed three hundred.

Agriculture and Arts.—No. 10 is the Agriculture and Arts Amendment Act, 1902, which alters in certain details the principal Act. It includes within the scope of the Act the formation of women's institutes for the purpose of improving rural home life and of imparting information in regard to women's work upon the farm.

Statute Law Amendment (No. 12).—This is an "omnibus" Act, to amend the law in various particulars (see also No. 6 *supra*).

Holidays.—S. 1 amends the definition of "holiday" given in the Interpretation Act by including Victoria Day.

Voters' Lists.—Part III. of the Ontario Voters' Lists Act (which deals with the lists for unorganised territory) is suspended by s. 2 for three years, unless during that time the Lieutenant-General in Council otherwise orders; it may in particular be brought into force in the case of a vacancy occurring in the representation of any electoral district in the Legislative Assembly.

Judicature.—S. 7 provides that the President of the High Court shall be that one of the Presidents of the King's Bench, Chancery, or Common Pleas divisions who, for the time being, is first in order of seniority; in case of his absence or illness, his duties may be performed by the President of any division. S. 8 provides that where, after a cause has been heard in the Court of Appeal and stands for judgment, a vacancy occurs on the bench, the remaining judges, or in case there is a difference of opinion, a majority of of them, may give judgment.

Police Magistrates.—S. 13 enables the Lieutenant-General in Council to appoint a second police magistrate for any city of not less than 200,000 inhabitants at a salary not exceeding $1,500.

Certiorari.—S. 14 enacts that no conviction or order by magistrates is to be removed into the High Court by *certiorari* except where an appeal to sessions would not afford an adequate remedy.

Petty Trespass.—S. 17 amends s. 1 of the Petty Trespasses Act by

including a garden and lawn, along with other enclosed premises, over which a trespass punishable under that Statute may be committed.

Mutual Fire Insurance.—S. 22 amends s. 8 of the Ontario Insurance Act (which enabled the freeholders in any municipality to call a meeting of freeholders to consult whether it was expedient to establish in the municipality a fire insurance company, upon the mutual or cash-mutual principle) by making a certificate of the Minister, to the effect that there exists in the municipality no adequate provision for fire insurance on the mutual plan, a necessary preliminary to the calling of a meeting of freeholders. The principal Act is further amended with regard to insurances with foreign unregistered companies.

Trust Companies.—S. 23 extends the list of authorised investments.

Liquor Licences.—S. 25 repeals s. 105 of the Liquor Licence Act, which provided that a conviction for any offence under the Act should not be void for defects in form (see also No. 33 *infra*).

Oaths in Judicial Proceedings.—S. 29 authorises the use of the Scotch form of oath.

Imperial Statutes.—No. 13 provides for the incorporation of Imperial Statutes in the printed roll of the revised, classified, and consolidated Statutes of the Province, adapting their form and language to the said revised Statutes, but without changing their effect.

Jurors.—No. 14 amends the Jurors' Act. In any county the selectors of jurors may determine that the general sessions of the peace shall be held immediately after the sittings of the High Court for jury trials, whereupon the jurors for the High Court and the inferior Courts are to be the same, and summoned at the same time. Where there is no business for a jury, the jury summonses are to be countermanded; but if any juror attends, owing to the non-receipt in time of such countermand, he is to receive his mileage and fees as heretofore. The Act is not to apply to any county in which a city is situated.

Expert Witnesses.—No. 15 limits the number of expert witnesses in legal proceedings to three on each side, unless the presiding judge or arbitrator gives leave to call more, such leave to be applied for before the examination of any of the experts who may be examined without leave.

Devolution of Estates.—No. 17 amends in certain particulars the Devolution of Estates Act. It *inter alia* enables an administrator or executor to lease or mortgage lands for the purpose of paying the debts of the deceased.

Wills.—No. 18 is the Wills Act. It adopts for the province Lord Kingsdown's Act (24 & 25 Vict., c. 114), making wills of personalty executed out of Ontario good for the purpose of probate if made according to the forms required by (1) the law of the place where made; or (2) the law of the testator's domicile at the time of the making of the will; or (3) the law of the testator's domicile of origin. Change of domicile is not to revoke will.

Land Titles.—No. 19 amends in certain particulars the Land Titles Act as to the registration of trustees, etc.

Removal of Obstructions in Rivers.—No. 20 enables the Commissioner of Public Works, upon giving notice to persons interested, to take steps to remove obstructions from rivers and watercourses. Compensation is to be paid to persons affected by such work.

Mechanics' and Wage-Earners' Lien.—No. 21 amends the principal Act by making further provision for the registration of a contractor's lien in respect of work done under a contract which is under the supervision of an architect or engineer.

Trade Disputes.—The principal Act on this subject (Revised Statutes, No. 158) is amended by No. 22, which provides that if any difference shall arise between a corporation or person employing ten or more employees and such employees, threatening to result or resulting in a strike or lock out, the Registrar of the Councils of Conciliation and Arbitration shall, when requested in writing to do so by five or more of such employees, or by the employers, or by the mayor or reeve of the municipality within which the industry is situated, visit the place of such disturbance, "and diligently seek to mediate between such employer and employees." The Registrar is directed to promote conditions favourable to a settlement by endeavouring to allay distrust and causes of friction and bring about agreements between employers and employees for the submission of their disputes to arbitration before resorting to strikes or lock-outs.

Marriage.—No. 23 amends the Marriage Act by setting out the table of prohibited degrees of consanguinity and affinity, which is to be printed on forms of affidavit to be made by parties about to contract marriage.

Companies.—No. 24 amends the Ontario Companies Act. Directors are not to vote on contracts in which they have a personal interest, but a director is not to be deemed to be interested in a contract, nor be disqualified from voting, by reason of holding shares or being a director in any other company with which a contract is made or contemplated. The Act further provides that deeds signed and sealed by a person on behalf of the company as its attorney shall have the same effect as if they were under the seal of the company. By-laws may be made by a company as to the issuing of bonds.

No. 28 makes provision in the case of the distribution of assets in winding up for the payment into court of debts due to infants and other persons under disability.

Grants to Railways.—No. 25 makes grants to railways on certain conditions.

Street Railways.—The provisions of the Street Railways Act requiring the use of a fender in front of each motor-car are by No. 26 made applicable to every street railway company now or hereafter established under any special Act of the Province, and are to be incorporated with such special Acts.

Electric Railways.—No. 27 deals with this subject. A Railway Committee,

consisting of the Commissioner of Public Works and two other members of the Executive Council of Ontario appointed by the Lieutenant-Governor, is set up, and jurisdiction over railways, electric railways, and street railways conferred upon it. Electric and street railway companies may enter into agreements with other companies as to running powers and interchange of traffic; such agreements so far as operative within any municipality are to be subject to the assent of the municipal council, or in case of refusal of such consent, of the assent of the Railway Committee, who are given extensive powers of enquiry. The Railway Committee may state cases for the opinion of the Court. The Act makes the following provisions as to the construction of railways on highways: The rails are to conform to the grade of and to be flush with the street, and the space between the rails and for eighteen inches on each side is to be maintained by the company; the speed of cars on any highway is not to exceed fifteen miles an hour, unless the Railway Committee authorise a greater speed; vestibules are to be provided on motor-cars during the winter months, for the protection of those in charge; contravention of this provision exposes the company to a penalty of ten dollars for each day on which any motor-car is run without such vestibule.

Municipalities.—No. 29 amends the Municipal Act in various respects It enables corporations to make agreements with the owners of farm-lands as to the rate of taxation to which the same shall be subject for any period not exceeding five years at a time; by-laws may be made giving effect to such agreements, but such by-laws, to be valid, must be approved by a vote of not less than two-thirds of the corporation. Provision is also made for reducing the area of towns and villages in unorganised territory; as to the constitution of councils in cities; as to scavenging; as to making by-laws in respect of the transmission of electricity over streets, etc.

No. 32 deals with municipal drainage. It enables the engineer or surveyor to include in his estimate of the cost of drainage work a sufficient sum to compensate the owners of low-lying lands for injuries they may sustain from the drainage work, in cases where the cost of continuing such drainage work to a point where the discharge of water would do no injury to lands and roads would be greater than the amount of injury likely to be caused to low-lying lands below the termination of the work.

Incorporation of Towns in Territorial Districts.—No. 30 relates to this subject. It makes provision for the proclamation of incorporation, the powers of towns so incorporated, the composition of their councils, and the conduct of elections.

Assessment.—No. 31 makes further provision as to assessment of property. The land of companies for supplying water, heat, light, and power, telephone and telegraph companies, street and electric railways, are to be assessed in the city ward where the head office is situated. Superstructures and substructures of such companies are declared to be "land," but the plant, poles, and wires used exclusively in running trains are to be exempt from municipal

assessment or taxation. Rolling stock also is not assessable; provision is also made with regard to bridges over international boundary lines.

Intoxicating Liquors.—No. 33 is the Liquor Act. Part I. provides for the question whether the Act shall be adopted or not being referred to the electorate, a definite majority of votes being requisite before Part II. of the Act can become operative. Part II. limits the sale of intoxicating liquor within the Province. Two kinds of licences are dealt with—the druggist's wholesale licence and the druggist's retail licence. Under the first of these the licensee may sell alcohol not exceeding in quantity ten gallons at any one time to any person for mechanical or scientific purposes; and to sell to any qualified medical practitioner and to any licensed retail druggist, but to no other, liquor not exceeding in quantity five gallons at any one time. Under the druggist's retail licence the licensee may sell liquor for medical and sacramental purposes only. Provision is made for ensuring that such sales are for one or other of the purposes allowed under the Act. Except under such a licence no person shall sell or keep for sale any intoxicating liquor, or keep or give liquor in any premises other than in his private dwelling-house. Further, no person shall use or consume liquor in the Province purchased or received from any person within the Province, unless it be purchased and received from a licensee, but this section (156) is not to apply to any person who, within a private dwelling-house, innocently uses and consumes liquor not thus purchased or received. No person other than the father, mother, or guardian, or a duly qualified medical practitioner is to sell or give liquor to a minor, and then only for medicinal purposes.

[This Act, when submitted to the voters, did not receive the majority requisite for its becoming operative.]

Public Health.—No. 34 amends the Public Health Act, by declaring that no hospital for consumptives shall be established without the permission of the local board of health.

Tolls.—No. 35 amends the Toll Roads Expropriation Act, 1901, in certain details.

Factories.—No. 36 amends the Factories Act by requiring that a sufficient number of iron or other non-inflammable fire-escapes shall be provided on the outside of factories.

San José Scale.—No. 37 amends the San José Scale Act, 1898. It requires the owner or lessee of any orchard or collection of plants, other than a nursery, to destroy by fire or effectually fumigate any plant infested with the scale.

Barberry Shrub.—No. 38 prohibits the planting, cultivation, or sale of barberry shrub. Hedges or fences formed of the shrub may, on certain conditions being fulfilled, be ordered to be destroyed—compensation being allowed therefor.

Game.—No. 39 specifies the period during which various kinds of game may be hunted or killed. For moose, reindeer, or caribou, the open season

is from November 1st to November 15th in certain parts of the Province, and from October 16th to November 15th in certain other parts; quail or wild turkeys may only be taken during November. The wood-hare or cotton-tail rabbit may be taken or killed where it is shown to cause actual damage to trees or shrubs.

Education.—There are several Statutes relating to this subject.

No. 40 amends the Public Schools Act. It enables, *inter alia*, provision to be made for the conveyance of pupils from rural school sections to urban schools. It further provides for manual training and domestic science classes.

No. 41 amends the Separate Schools Act. Continuation classes may be provided by the separate school board where there is no high school in the district; to these classes only pupils may be admitted who have passed the entrance examination to a high school, or some higher examination, or whose qualification for admission has been approved by the principal of the school and the separate school inspector.

No. 42 amends the High Schools Act. This, *inter alia*, enables free scholarships to be awarded by the board of trustees to the pupils of public or separate schools within the municipality. Sums not exceeding $300 in cities of 100,000 or more, and not exceeding $150 in other municipalities, may be annually voted by the board of trustees for the encouragement of athletics and the expenses of school games.

No. 43 amends the University Act, 1901, in regard to the assessment of property occupied by professors, the limitation of actions against the trustees, and various other matters.

7. PRINCE EDWARD ISLAND.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—39.

Highways.—No. 2 amends the Public Roads Act, 1901. The Province is divided into fifteen or more road divisions, each under the control of an inspector, whose duty it is to report to the Commissioner of Public Works on the condition of the roads and bridges in his district. The road tax is raised from 75 cents to one dollar, and the age limit for males liable to pay the tax is reduced to sixty years instead of seventy.

Intoxicating Liquors.—No. 9 further amends the Prohibition Act, 1900, by restricting the sale of liquor for medicinal purposes to legally qualified chemists and druggists. The sale must be on a certificate of a duly qualified

[1] The Session 2 Edward VII. commenced on March 11th, 1902. Of the Acts passed, twenty-three would in the United Kingdom be considered as private Acts.

resident physician, and must not exceed ten ounces in quantity. A separate certificate is required for each sale. Sales of liquor for use in some art, trade, or manufacture must be on the certificate of an inspector under the Act.

Dentistry.—No. 16 incorporates the members of the dental profession of the Province into a society, and makes it penal for any person to practise dentistry for gain without he be registered or licensed pursuant to this Act. The Act does not apply to surgeons or physicians temporarily filling teeth or otherwise attending to them for the prevention or cure of toothache.

Appropriation.—No. 22 makes an appropriation out of the funds of the public treasury for the different departments of the public service for the ensuing year.

Amending Acts.—The other Acts of this Session, where not of a local character, were confined to short amendments of previous legislation.

8. PROVINCE OF QUEBEC.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—128, of which 42 are Public and 86 Local or Personal.

Supply.—No. 1 is a Supply Act.

Colonisation and Forest Industry (No. 3).—This Act, reciting that colonisation and forest industries are the most important factors in the progress of the Province, authorises the Lieutenant-Governor in Council to appoint a Commissioner to make a critical study of the law relating to public lands, woods, and forests, colonisation societies, works, and roads, and the protection of settlers, to find out what sections of the country are most suitable for colonisation, the sufficiency of roads, the building of bridges, and the grant of subsidies to railway companies, and to study any new proposals or systems calculated to foster colonisation and the development of forest industries. Power is given to the Commissioner to summon witnesses and require production of papers, etc.

Licence Law (No. 13).—This amends the Quebec Licence Law in a number of small particulars.

Game (No. 14).—This again makes small amendments in the Quebec Game Laws.

Mining (No. 15).—By this Act no sales of mining concessions of more than four hundred acres in superficies are, in the case of the superior metals, to be made to the same person; but a power is reserved to the Lieutenant-Governor in Council to make a larger grant, not exceeding one thousand acres, upon proof of the grantee's capital and resources.

Education (Nos. 16, 17, and 18).—These Acts contain some small amend-

ments of the Education Act, 1899, the only one of importance being a provision for an annual census of children attending school, distinguishing certain age categories.

Churchwardens (No. 22).—This Act enables churchwardens to withdraw from their office by notice in writing.

Bar Council (No. 23).—Under the name of "The Bar of the Province of Quebec," the advocates, barristers, counsel, attorneys, solicitors, and proctors at law, designated shortly by the name of "advocates," form a corporation entitled "The General Corporation of the Bar." The present Act provides that the power of this corporation may be exercised by a council called "The General Council of the Bar of the Province of Quebec," to consist of the batonnier and three delegates from the section of Montreal, the batonnier and two delegates from the section of Quebec, and the batonnier and one delegate from each of the sections of Three Rivers and St. Francis, and the batonniers of Arthabaska, Ottawa, and Bedford. The Attorney-General of the Province is *ex-officio* member of the General Council. Power is given to make rules for the regulation of stenographers. A penalty is imposed on any person acting as intermediary between a party and his advocate who promises or makes to such party a rebate in the advocate's fees.

Dentists (No. 24).—A contribution to the Dentists' Association is required from every member. A member in arrear after notice loses his right to practise.

Civil Engineers.—No. 25 provides for civil engineers accidentally excluded from the Act of 1898 being admitted to practise in the Province if duly qualified.

Land Surveyors.—No. 26 amends the law in a variety of small particulars.

Veterinary Surgeons (No. 27).—This Act provides for the incorporation of the graduates of certain veterinary schools in the Province under the name of "The Board of Veterinary Surgeons of the Province of Quebec." The affairs are to be conducted by a Board of Governors, called "The Provincial Veterinary Board." No person is to practise veterinary surgery in the Province unless he has a licence from this Board. Examiners are to be appointed to examine candidates for the study of veterinary surgeons, and a register of persons who have qualified is to be kept. No person unless registered is competent to recover fees for services.

Joint Stock Company (No. 30).—By this Act a company is empowered by a simple resolution to issue notes payable to order or bearer for the settlement of accounts or other current matters.

A company may also, on a resolution of two-thirds of the shareholders present at a meeting specially convened for that purpose, issue bonds or debentures to the amount of two-thirds of the total value of its immovable property, and such bonds or debentures are, on registration, to constitute a privilege claim in favour of the holders, and give a right of preference

over all debts and claims posterior to the issuing of such debentures. A company may grant a hypothec upon its immovable property as security.

No. 31 enables directors at any time to make a by-law sub-dividing existing shares into shares of smaller amount.

Dairy Produce (No. 32).—Any five or more persons engaged in the manufacture of butter and cheese may under this Act associate themselves for the purpose of carrying on a Butter and Cheese Exchange, and obtain incorporation. The by-laws are to be filed in the office of the public notary of the district, and a statement of the business transacted is to be transmitted every year to the Minister of Agriculture.

Agricultural Syndicates (No. 33).—These syndicates have for their object the protection and defence of agricultural interests. They are co-operative associations in the nature of limited joint stock companies for consumption, production, and credit, and are to be formed by persons directly interested in agriculture or colonisation—as proprietors, farmers, domestic servants, or hired workmen. The syndicate may buy for resale to its associates only articles necessary for the support of life or the works of their industry; may open up credits for them and make loans to them, establish works in common for the associates, or permit of their devoting themselves to processes of production, and selling the products thereof either collectively or individually. Farmers' clubs and agricultural societies may, with the permission of the Minister of Agriculture, subscribe to such syndicates. The shares are to be to order, and are only to be transferred according to the by-laws of the association. The syndicate is to be formed by the members subscribing a declaration in statutory form. It is to be managed by a board of five members, which is to meet at least once every month, and is empowered to do everything, subject to the by-laws, connected with the interests of the association. The board of management is to be controlled by a board of supervision consisting of three, which may at any time convene an extraordinary meeting of the association.

The general meeting of shareholders is to be held in January each year, and is to determine the amount of profits which it shall allot.

Mutual Fire Insurance Companies (No. 35).—The board of directors is in no case to issue a policy for an amount exceeding $5,000 on one risk. The amount of insurance effected in cities and town is not to exceed 25 per cent. of the total insurance effected by the company.

Probate (No. 37).—When any person who has had, and has ceased to have, his domicile in the Province of Quebec dies outside the Province, having made outside the Province a will which is valid under the law of the Province, and such person leaves property in the Province, his will may be proved in the Province in any district in which he may have left property, as if the will had been made and the person domiciled therein.

Traders and Marriage Contracts (No. 38).—Every married person doing business as a trader, whether alone or in partnership with others,

is to register in the office of the Prothonotary of the Superior Court of the district within sixty days from the day on which trading commenced, or from the date of the marriage, a declaration in writing stating if he is under community or is separate as to property—in case of a community of property, if by contract of marriage, and in case of separation of property, if by marriage contract or by judgment.

Order in Council: Hunting Licence.—An Order in Council—after reciting that a great many persons from the Province of Ontario and the United States belong to fish and game clubs incorporated under the Fishery and Game Laws of the Province, and that such clubs pay fees, in the shape of annual rent, for permits to hunt in the Province—declares that a certificate of membership given by the president of a fish and game club shall be equivalent to a hunting licence under Art. 1415 of the Revised Statutes of Quebec.

9. NEWFOUNDLAND.

[*Contributed by* H. C. Gutteridge, Esq.]

Acts passed—29.

French Treaties.—No. 1 continues the Newfoundland French Treaties Act in force till December 31st, 1902.

Registration of Deeds.—No. 3 amends No. 80 of the Consolidated Statutes as regards the proof of deeds executed out of the Colony, and provides a mode of proof for deeds in certain cases where the witnesses and parties are incapable of proving them.

Warehouse Receipts.—No. 5 is an Act amending the Law respecting warehouse receipts, bills of lading, and other securities in the possession of banks. It provides that certain specified banks may lend money on the security of agricultural produce, minerals, standing timber, and produce of the sea, and gives them a power of sale on non-payment subject to notice to the pledgor. No security can be given under this Act in respect of a past liability. In certain cases the claim of a bank in respect of securities under this Act is made preferential, but the banks are postponed to unpaid vendors with a lien, unless they acquired the security without notice of the lien. False statements in securities, and the wrongful alienation of goods pledged under this Act, are made misdemeanours.

Whaling Industry.—No. 11 provides that no person shall engage in this industry without a licence. The holder of a licence is debarred from using more than one steamer, and from employing "tow boats." Rules are also laid down as to the manner of killing whales, and whaling in the neighbourhood of fishing boats is prohibited. The Act also provides that no foreign workmen shall be employed in this industry.

Foreign-built Vessels.—No. 13 places an *ad valorem* duty of 5 per cent.

on foreign-built vessels applying for registry in the Colony. An exception is made in the case of such vessels as shall be continuously employed in connection with the trade or fisheries of the Colony.

Bog Lands.—No. 15 empowers the Governor in Council to lease such unappropriated Crown lands as are declared to be bog lands.

Deer.—No. 16 prohibits the hunting of moose or elk before January 1st, 1912, and the hunting of caribou from February 1st to July 31st in any year. Not more than two stag and one doe caribou may be killed without a licence, and the export of more than three carcasses, heads, or antlers of stag caribou is prohibited. This Act also makes certain methods of hunting unlawful.

Game.—No. 17 fixes a close time from January 12th till August 20th for migratory birds.

Education.—No. 18 amends the Education Act, 1895, by making additional appropriations for bonuses to teachers, and also for industrial education. It deals with the appointment of superintendents of education chosen from the different denominations, and defines the Salvation Army educational districts.

Sale of Tobacco to Juveniles.—No. 19 prohibits the sale of tobacco to juveniles apparently under fifteen years of age. It also provides for the punishment of persons acting as agents to procure tobacco for juveniles, and of juveniles refusing to account for tobacco found in their possession. The justices can dismiss a charge under this Act against a juvenile, if satisfied that the Act complained of was done *bona fide* at the request of a parent or guardian.

Public Libraries.—No. 20 establishes Public Library Boards whose duty it is to organise circulating and travelling libraries in all parts of the Colony and Labrador.

Intestacy.—No. 21 provides that when an American citizen dies intestate in the Colony, notice of his death is to be given to the United States Consul at St. Johns, so as to enable the latter to act as interim administrator.

Employers' Liability.—No. 22 amends No. 87 of the Consolidated Statutes. It voids all agreements entered into by workmen for the purpose of contracting themselves out of the principal Act. It also defines the liability of an employer for the acts of his sub-contractor. S. 2 and s. 7, sub-s. 2, of the Imperial Workmen's Compensation Act, 1897, are incorporated in this Act, which also repeals ss. 6 and 8 of the principal Act.

Revenue.—No. 26 imposes an import duty of three cents per pound on rough undressed leather when imported by tanners for further dressing.

No. 27 reduces the import duty on port wine by one-half in view of the admission of Newfoundland fish into Portugal at the same rate of duty as Norwegian fish.

Public Loan.—No. 28 authorises a loan of $125,000 to be appropriated to court-houses, lighthouses, and telegraphs.

Appropriation—No. 29 makes an appropriation out of the Consolidated Revenue Fund for the different branches of the public service.

Minor Acts:

Local Affairs.—No. 6 provides a constitution for the municipality of St. Johns.

Electricity.—No. 8 incorporates the United Towns Electric Company.

Presbyterian Church.—No. 9 incorporates the Board of Trustees of the Century Church and Manse Building Fund for the Presbyterian Church in Canada, Eastern Section.

Harbours.—No. 14 relates to the formation of a Board for the control and management of the Harbour of Grand Bank.

Post Office.—No. 23 amends the Post Office Act, 1891.

Pensions.—No. 24 grants pensions to two lighthouse keepers.

Customs.—No. 25 makes certain amendments in the Customs Act, 1898.

No. 2 amends No. 109 of the Consolidated Statutes.

No. 4 repeals Nos. 66 and 67 of the Consolidated Statutes.

No. 7 amends 56 Vict., No. 11.

No. 10 amends No. 29 of the Consolidated Statutes.

No. 12 amends No. 118 of the Consolidated Statutes.

10. BERMUDA.

[*Contributed by the* Hon. Reginald Gray, *Attorney-General.*]

Acts passed—61.

The Session of 1902 was an unusually prolific one in view of the new Compilation of Laws of this Colony from 1690 to 1902, which has since been published in two volumes. Nine consolidating Acts were among the number passed.

Banking (No. 5).—The Public Treasury Act, 1902, authorised the opening of bank accounts by the Receiver-General in the two local banks, and the payment of public claims by cheque.

Criminal Law (No. 8).—The Bermuda Riot Act, 1902, adopts the principal provisions of the English Statute Law with regard to riots. Recent immigration from the West Indies rendered this necessary.

Partnership (No. 10).—The Partnership Act, 1902, is practically a transcript of the Imperial Statute 53 & 54 Vict., c. 39, with a few minor alterations for local purposes.

Laws (No. 19).—The Compilation of Laws Act, 1902, authorised the preparation by the Attorney-General of a new edition of the Acts of the Colony from 1690 to 1902, with chronological tables and an alphabetical index.

South African Prisoners (No. 36).—The South African Prisoners Act, 1902, was passed to remove any doubt as to the legality of the detention in Bermuda of certain convicted prisoners sent here from South Africa during the recent war.

Jury (No. 39).—The Jury Act, 1902, is a comprehensive measure consolidating the whole of the Statute Law of the Colony relative to jurors and juries.

Corporal Punishment (No. 46).—This Act consolidates the existing local law on this subject, and places certain restrictions on whipping as a punishment for criminal offences.

Patents (No. 51).—The Patents, Designs, and Trade Marks Act, 1902, regulates the local law on this subject, on which it is the first Act passed here. It was framed on the lines of a similar Act passed in Trinidad and Tobago in 1900.

Statute Law Revision (No. 55).—This Act was passed to facilitate the new Compilation of Laws, and to enable its contents to be condensed as far as practicable. It provided for the repeal of various obsolete enactments, and for the omission of others of no practical utility, and authorised various abbreviations in formal parts of Acts.

Immigration (No. 58).—The Immigration Act, 1902, consolidated all the existing legislation on this subject. The principal Act was passed in 1898 to endeavour to restrict the influx of undesirable immigrants, and amending Acts have been enacted almost yearly since to remedy defects which experience showed to exist. In its present form the Act is probably the most complete and comprehensive measure hitherto passed in any British Colony on this side of the Atlantic, except Canada.

The new Compilation of the Laws of Bermuda in two volumes, with the chronological tables and alphabetical index separately bound, was published in May, 1903, by Messrs. Wildy & Sons, of Lincoln's Inn Archway, London. It contains all the Statute Law of the Colony in force at the end of 1902, except those portions which were omitted under the authority of the Statute Law Revision Act, 1902.

IX. WEST INDIES.

1. THE BAHAMAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1902)—23.[1]

Tonnage Dues (No. 2).—The Tonnage Consolidation and Amendment Act, 1902, imposes a yearly duty of one shilling for every ton measurement on all vessels arriving at any port in the Colony, such duty to be paid only once in the year on any vessel. Vessels of war, transports, and other vessels employed on the Government or mail services are exempted.

Fishery Protection (No. 5).—The Fishery Protection Act, 1902, defines a "foreign vessel" to be one not *bonâ fide* owned within the Bahama Islands, and prohibits such foreign vessels from gathering sponges or taking turtles or other fish within the territorial waters of the Bahama Islands under penalties of a fine and the forfeiture of such vessel, and gives power of search over such vessels within territorial waters.

Judicature (No. 6).—The Supreme Court Further Amendment Act, 1902, amends a like Act, 1896, and provides that duplicates of probates and letters of administration sealed with the seal of the Court granting the same, and copies certified by the Court granting the probate, shall have the same effect as the original.

Infectious Diseases (No. 7).—The Infectious and Contagious Diseases Notification Act, 1902, requires every medical practitioner to notify to the medical inspector of the Colony any case coming to the practitioner's notice of infectious or contagious disease.

The definition of "infectious or contagious disease" in the Act applies to typhus fever, typhoid fever, scarlatina, scarlet fever, puerperal fever, measles, German measles, smallpox, diphtheria, whooping cough, Asiatic cholera, bubonic plague, yellow fever, and hydrophobia.

Navigation (No. 10).—The Inspection of Vessels Act, 1902, requires the owners of all vessels propelled by machinery carrying passengers in the harbour of Nassau to have an official certificate as to the sound and efficient condition of the engines, boilers, and other machinery, under the penalty imposed by the Act.

Quarantine (No. 17).—The Quarantine Amendment Act, 1902, imposes on the masters of all vessels arriving at any port in the Colony a penalty of not exceeding £50 for suffering any person on board to quit the vessel before the same has been admitted to pratique.

[1] Acts are passed by the Governor, the Legislative Council, and Assembly of the Bahama Islands, and are numbered consecutively for the regnal year, and no Acts come into operation until official notice appears in the official *Gazette* that the King has not disallowed the same.

Explosives (No. 20).—The Explosives Act, 1902, empowers the Governor in Council to make regulations for the storage of gunpowder, nitro-glycerine, dynamite, guncotton, blasting powder, and any other substance dangerous on account of its explosive qualities.

Wireless Telegraphy (No. 22).—The Wireless Telegraphy Restriction Act, 1902, makes it unlawful for any person in the Colony to transmit or receive messages across the seas by wireless telegraphy without the previous consent in writing under the hand of the Colonial Secretary of the Governor in Council authorising the same.

2. BARBADOS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1902)—40.[1]

Arms and Munitions of War (No. 3).—The Exportation of Arms Act, 1902, enables the Governor by proclamation to prohibit the exportation of arms, ammunition, etc., to any country therein named, in order to prevent such arms, etc., being used against the King's subjects or forces engaged in military or naval operations.

Trustee Investments (No. 4).—The Trustee Investment in Barbados Government Securities Act, 1902, applies to all Barbados Government securities to which the Colonial Stock (Imperial) Acts apply; and, in order that Barbados Government securities may be included among the securities in which, by virtue of the Trustee (Imperial) Act, 1893, and the Colonial Stock (Imperial) Act, 1900, trustees may invest, provides, in compliance with the conditions prescribed by the Imperial Treasury, for payment by the Government of Barbados of any sum of money declared to be payable in respect of any Barbados Government securities, by the final judgment, decree, rule, or order of any Court in the United Kingdom.

It also declares that if any Barbados Act is passed which the Imperial Government may deem to be to the detriment of holders of Barbados securities, such Act will properly be disallowed.

Solicitors (No. 8).—The Solicitors (Amendment) Act, 1902, amends the Solicitors Act, 1882, by enabling enrolled law agents under the Law Agents (Scotland) Act, 1873, to have their names inserted in the solicitors' rolls and practise in the Barbados Courts.

Public Finance (No. 9).—The Executive Committee (Amendment) Act, 1902, provides that the balances of all grants unexpended at the end of the year to which they refer shall lapse except in respect of liabilities incurred.

Dog Licences (No. 10).—The Dog Licence Act, 1902, provides that every owner, as defined by the Act, of any dog shall take out an annual

[1] Acts are passed by the Governor, Council, and Assembly of the Island, and are numbered consecutively for the calendar year.

licence, and that a list of the names of all licensed owners shall be published each month by the parochial treasurer, and exhibited at each police-station and parochial treasurer's office.

Reformatories for Girls (No. 12).—The Reformatory and Industrial School (Girls) Act, 1902, enables the Governor in Executive Committee to use any Government lands or buildings for the purpose of a reformatory and industrial school for girls, and contains provisions as regards the discipline and control of such reformatories and schools.

Inland Revenue: Rum Duty (No. 13).—The Rum Duty Act, 1902, contains in 113 sections provisions as to the distillation of rum, the registration of stills, licences, etc., and for the payment and collection of an excise duty on rum and for the control of the distilleries by revenue officers.

Judicature (No. 14).—The Windward Islands Court of Appeal Act, 1902, amends and consolidates the Acts relating to the Windward Islands Court of Appeal. It declares that the Court of Appeal shall consist of the Chief Justices of Barbados, Grenada, and St. Lucia, and, for appeals from Courts in Barbados, shall sit in Bridgetown and be a Court of Record. The Act elaborates the whole procedure and jurisdiction of the Court, and enables the Court to make rules for the approval of the Governor in Executive Committee, and subject to disallowance by His Majesty in Council.

Locomotives on Highways (No. 18).—The Locomotives on Highways Act, 1902, enables the highways to be used by "light locomotives," defined by the Act as vehicles propelled by mechanical power under three tons in weight unladen, and not used to draw more than one vehicle, such vehicle with its locomotive not exceeding four tons in weight unladen, and constructed so as to emit no smoke or visible vapour. The maximum speed limit is twelve miles per hour. The owner's name and address is to be painted on some conspicuous part of the vehicle. Regulations as to rule of the road, use of warning bells, and police control, together with provisions for payment of an annual tax and penalties for breach of the law, are contained in the Act.

Vaccination (Nos. 19, 31, 39).—The Voluntary Vaccination Acts, 1902, provide means for a voluntary system of vaccination, and enable the local parochial boards of guardians to declare certain classes of persons eligible for vaccination free of charge.

Prisoners of War (No. 20).—This Act provides for the punishment of persons aiding prisoners of war to escape, and disobeying certain military regulations relating to such prisoners. By another Act (No. 22), articles, except intoxicating liquor, being gifts to the Boer prisoners of war are exempted from import duties.

Coronation Day (No. 21).—This Act sets apart June 26th, 1902, to be observed as a public holiday for the purpose of celebrating the Coronation of His Majesty the King.

Agricultural Aid (No. 24).—The Plantations in Aid Act, 1902, authorises the Executive Committee to borrow £200,000 at 5 per cent. per annum repayable before August 31st, 1903, on security of the general revenues and assets of the Government of Barbados. Any Imperial grant to the Colony for cultivation of the sugar plantations is to be set apart as a separate fund to be applied exclusively in the repayment of the money borrowed under the Act. Commissioners are to be appointed to administer the Act in respect of applications by owners of plantations for advances towards cultivation expenses. Provisions are contained as to the terms and conditions on which advances are to be made to owners of plantations and for the recovery of the loan, which is to be a specialty debt, and to rank as a first charge against the plantation in priority to all other charges except such as shall be first charges under the Agricultural Aids Acts, 1887-1901.

Protection (No. 36).—This Act fosters and encourages the manufacture of butter, oleomargarine, and butterine in the Colony by a company called the O.K. Manufacturing Company, Limited, and enables such company to import packages and machinery required in the manufacture free of any duty.

Agriculture (No. 40).—The Agricultural Aids (Amendment) Act, 1902, amends like Acts of 1887 and 1901, and may be cited with those Acts as the Agricultural Aids Acts, 1887-1902. The Act provides that after January 1st, 1904, no loan under the Act of 1887 shall be made to any owner on security of any cane crop prior to June 1st in the year preceding the reaping of the crop, except for the purchase of manure, between January 1st and June 1st in such year.

3. BRITISH GUIANA.

[*Contributed by* Sir Thomas Rayner, A.-G.]

Ordinances passed—42.

During the year under review forty-two Ordinances were passed, being the largest number ever passed in one year by the Legislature of this Colony. No less than twenty-two of these were Ordinances amending other Ordinances, and for the most part are very short, eleven of them, apart from the section prescribing the short title, consisting of only a single section.

The most important Ordinances are the following :—

Civil List (No. 1).—The Civil List Ordinance, by which the Legislature, in pursuance of a resolution of the Combined Court, voted a Civil List, in which are included the heads of the principal departments of the Government, for three years. The Ordinance expires at the end of 1904.

Customs (No. 8).—The Customs Duties Ordinance.

Taxation (No. 9).—The Tax Ordinance, by which the Combined Court fixed the customs duties and taxes to be levied during the financial year

1902-3. In this Colony these duties and taxes are fixed annually, the Combined Court, by which alone customs, duties, and taxes can be imposed, having always refused to vote supplies for more than a year at a time. These two Ordinances are substantially the same as those passed for the same purpose the previous year.

Clergy (No. 11).—The Clergy List Ordinance, makes provision for the maintenance of ministers of the Christian religion in the Colony. The Ordinance is somewhat similar in character to the Civil List Ordinance, and is only passed for a limited term, in this case five years. It expires on March 31st, 1907. Formerly the clergy of the Church of England and the Church of Scotland were paid salaries by the Government, and were in much the same position as members of the Civil Service. This arrangement has now been altered, and while the vested rights of existing clergy are recognised, no new clergy will receive salaries from the Colony, but as vacancies arise the Colony will pay a sum equal to 75 per cent. of the salary of the retiring clergyman to the governing body of the Church to which he belonged as a grant in aid of its funds. This Ordinance provides during its continuance for the salaries of clergy serving in the Colony at its commencement, and for a grant of 75 per cent. of the salaries of those who have already retired, or who may retire during its continuance, being made to their Church. No salaries are paid to the clergy of the Roman Catholic Church or Dissenting Churches, but a lump sum is granted annually under the Ordinance to these Churches.

Liquor Trade (No. 20).—The Licensed Places (Hours of Closing) Ordinance fixes the hours during which places licensed for the sale of alcoholic liquors may be open. The hours fixed were between 5 a.m. and 11 p.m. on Mondays, and 6 a.m. and 11 p.m. on other days. The hour of 6 a.m. was altered to 5 a.m. by an Ordinance passed later in the year (No. 28, s. 22), so that the hours are now the same on all days.

Protection of Natives (No. 21).—The Aboriginal Indians' Protection Ordinance makes provision for the appointment of an official called the Protector of Indians, whose duty it is to look after the welfare of the Indians, the aboriginal inhabitants of the Colony. He is empowered by the Ordinance to take proceedings in his own name against persons committing offences against them, and may interpose for their protection in any proceedings in which they are concerned, and has also power to cancel any contract for labour entered into by an Indian. It is made an offence punishable summarily to entice away or cohabit with the wife of an Indian. The Ordinance also empowers the Governor to declare any part of the Colony to be an Indian reserve on which no one but an Indian may go or live except in accordance with rules to be made by the Protector with the approval of the Governor in Council. Provision is also made for the appointment of Indians with the title of "captain" and to exercise authority among their own people.

Lands and Mines (No. 25).—The Department of Lands and Mines Ordinance amalgamates into one Department what had hitherto been two separate Departments—namely, the Government Land Department and the Department of Mines.

Infectious Diseases (No. 26).—The Infectious Diseases (Notification) Ordinance provides for the notification of infectious diseases, and is taken from the provisions on the same subject contained in the English Act, 52 & 53 Vict., c. 72.

Patents (No. 31).—The Patents Ordinance was passed to make the law of this Colony relating to the granting of patents for inventions uniform with that of England and other Colonies. It is based on Part II. of the Patents, Designs, and Trade Marks Acts, 1883 (46 & 47 Vict., c. 57), and under it the procedure for obtaining patents is practically the same as in England.

Insurance by Civil Servants (No. 41).—The Public Officers (Insurance) Ordinance has been passed to compel members of the Civil Service to insure their lives for the benefit of their wives and children. Formerly all officials in the Colony were required to contribute to a Widows' and Orphans' Fund, constituted under Colonial Ordinances, but that Fund has now been abolished, except as to those who were contributors to it before December 21st, 1900. Under the scheme substituted for it by the Ordinance under review, an official has 4 per cent. deducted monthly from his salary, and he is required to effect an insurance on his life for such sum as a premium equal to 4 per cent. of his salary will secure, and at the end of the year the deductions are applied in payment of the premium. The policy is to be assigned to the Receiver-General, and cannot be attached, and at his death the money is payable for the benefit of his widow and children in such manner as the Governor in Council may determine.

Gambling (No. 42).—The Gambling Prevention Ordinance. This was passed to make more stringent provisions against the growing evil of gambling in the Colony, particularly against a form of it locally known as "cheefa," a kind of lottery introduced by the Chinese, though by no means confined to them. The Ordinance is based on a Jamaica Law, which in turn was taken from an Ordinance of the Straits Settlements. In addition to the usual provisions as to gambling and lotteries, it is made an offence to buy or sell a lottery ticket, and money paid for a lottery ticket is made recoverable at law. Power is also given for the issue of warrants to enter and search premises suspected to be kept for gaming, and for the seizure of all gaming appliances and the arrest of all persons found there. If any house is found to be constructed in a peculiar manner, such as being provided with an unusual number of doors, or means of exit, or constructed so as to prevent access, or provided with unusual means for enabling the occupants to observe the approach or entry of persons to

the house, such house is to be deemed to be a gaming house unless the contrary is proved, and provision is also made for enabling a magistrate to order the demolition of such peculiarities of construction.

Of the remaining Ordinances five are in the nature of private Ordinances.

There is in this Colony no distinction between public and private bills, though opportunity is given to persons interested in the latter to be heard before the Legislature, but when passed such bills are included and numbered among the public Ordinances of the year.

The remainder of the Ordinances passed in 1902 make small amendments in the law, and call for no special mention.

4. BRITISH HONDURAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1902)—15.[1]

Trust Funds (No. 2).—The Trustee Investment in British Honduras Government Securities Ordinance, 1902, contains the necessary provisions to enable the Colonial Stock (Imperial) Act, 1900, to apply to the Government securities of the Colony.

Corporal Punishment (No. 12).—This Ordinance amends the Consolidated Laws in respect of the punishment of flogging, and provides the maximum number of strokes for offences and for breaches of prison discipline.

Ecclesiastical (No. 13).—This Ordinance constitutes the Roman Catholic Church in British Honduras a corporate body with power to acquire, hold, and transfer lands and tenements of every tenure, and also all personal estate. All Church property now and hereafter belonging to the Church in British Honduras shall be vested in the corporation of the Roman Catholic Church in British Honduras constituted by this Ordinance.

Public Health (No. 14).—The Public Health Ordinance, 1902, amends the like Ordinance of 1894. The term "dangerous infectious disease" in the principal Ordinance of 1894 shall mean smallpox, yellow fever, cholera, bubonic plague, diphtheria, and any other disease which the Board may notify in the official *Gazette* as being a dangerous infectious disease. Powers for the removal of cases and other sanitary regulations for the prevention of the spread of disease are contained in the Ordinance.

Electric Lighting (No. 15).—The Belize Electric Lighting Ordinance, 1902, enables the District Board to enter into contracts with any body of persons corporate or unincorporate for a supply of electricity for lighting and other purposes. The terms and conditions of such contracts must be

[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council, and are numbered consecutively for the calendar year.

such as the Board may think expedient, and the Governor in Council may approve.

The Statutory Orders of the Governor in Council made in 1902 are printed with the Ordinances for 1902.

5. JAMAICA.

[*Contributed by* S. Leslie Thornton, Esq.]

Laws passed—33, of which No. 16 had not been assented to up to September 13th, 1902.

Victoria Day.—By Laws Nos. 1 and 30, May 24th is made a public general holiday, unless it falls on a Saturday or Sunday, when the Monday next following is substituted for it.

Evidence of Island Chemist.—By Law 7, the Island Chemist's certificate is made *prima facie* evidence at preliminary investigations in respect of indictable offences, as well as at coroners' inquests.

Cruelty to Animals.—No. 8 repeals existing enactments on this subject and re-enacts them with amendments. S. 13 makes it an offence to use any animal under the age of two and half years in any cart, plough, or carriage, or as a beast of burthen.

Vagrancy.—No. 12 consolidates and amends the Laws on this subject. It is a stringent measure, and will, it is hoped, have some effect in checking the increase in the numbers of able-bodied young men who live idle and criminal lives. S. 3 defines a vagrant to mean "any person who has no visible lawful means of subsistence, and who, being able to labour, habitually abstains from working at any trade, profession, or calling." A special form of information is provided for the commencement of proceedings, and the *onus probandi* that the accused has no visible lawful means, and does habitually work as described, is placed on the defendant. The punishment for vagrancy in the case of a first offence is two months' imprisonment with or without hard labour, and for a second or other offence under the Law within a year of a previous conviction, six months.

Idle and disorderly persons, as described by the Law, may receive the same punishment, but the imprisonment for a second offence may be extended to nine months. Rogues and vagabonds and incorrigible rogues may be sentenced to twelve months and two years respectively. The trial is to be a summary one before a resident magistrate, but in cases where a longer period of imprisonment than twelve months appears to be necessary, the magistrate must commit the accused to the Circuit Court, where after summary enquiry without a jury the Court may order further imprisonment up to two years. Persons "found offending against this Law" may be

arrested without warrant, and are competent but not compellable witnesses. By s. 16 the resident magistrate may infer from the circumstances of the case and from the accused's known character, as proved to him, the intent of the accused to commit a felony or offence without proof of any particular act tending to show such intent.

Prevention of Fires.—By Law No. 17 the Governor is empowered by Proclamation to prohibit the setting of fire to land within such parts of the Island and within such time as he may specify. By s. 3 before setting fire to any land the occupier is required to clear of all inflammable matter an open space of twenty-five feet round it, and three clear days before setting fire to it he must notify the adjoining occupiers of his intention and the date, under a penalty of £5, and in default six months' imprisonment with or without hard labour. A somewhat ambiguous presumption is created by s. 6, which provides that "proof of any crop or trash growing or being in or upon any land having been on fire" shall be "*prima facie* evidence against the occupier of such fire having been set thereto by such occupier."

Street Traffic Regulation.—Nos. 21 and 28 give power to the police authorities to regulate street traffic and public meetings in Kingston, and provides a penalty of £2, or two months' imprisonment in default with or without hard labour for offences against the Law.

Protection of Emigrants.—Law No. 23 takes the place of three recent enactments on the same subject. By its provisions the Governor can apply the Law to any foreign country or place by proclamation, and thereafter no passenger may proceed to the proclaimed place without a permit. Annual registration under a fee of £5, with a bond in £500 with two sureties, is required from all recruiting agents for the purpose of satisfying the Inspector-General of Police that the recruiting agent is duly authorised by some person to bind him by his contract for service. The moneys so received are to be used to form a "Distressed Emigrants' Fund," to be applied in meeting the expenses of repatriating or relieving distressed emigrants. Under penalties shipping agents and masters of ships are prohibited from booking passengers to a proclaimed place.

Pawnbrokers.—No. 24 is a re-enactment of the English Pawnbrokers Act, 35 & 36 Vict., c. 93, in this Island.

Central Factories.—No. 31 provides means for encouraging the extension of the sugar industry in this Island which it is hoped will result from the recent Brussels anti-bounty convention. Under its provisions the Government is authorised under the conditions specified to guarantee the capital and interest of such a company; provided that the rate of interest so guaranteed shall not exceed £3 10*s.* per cent. when both principal and interest are guaranteed, or £5 per cent. when only the interest is so guaranteed, and that the guarantee shall not be for a longer period than thirty years. Where persons contract in writing with the company to cultivate their land and supply the company with the product of such cultivation, the contract,

if registered within thirty days of its making by the person in possession of the property, becomes under this Law a valid and preferential charge in favour of the company over all crops growing or to be grown on the land, and all machinery, live and dead stock, used or to be used for the purposes of the contract. S. 20 gives the company power to lay down and work tramways on the public roads subject to the approval of the Director of Public Works.

Industrial and Provident Societies.—No. 33 introduces into this Island the provisions of 56 & 57, Vict., c. 39, substantially without alteration.

The remaining legislation of the year was of merely local interest.

6. TURK'S AND CAICOS ISLANDS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—5.[1]

Poisons, Sale of (No. 2).—The Poisons (Amendment) Ordinance, 1902, amends the like Ordinance of 1901 by making the right to sell any patent or proprietary or homœopathic medicines in the original box or bottle conditional on the wrapper or cover being unbroken, or any one or more doses of such medicine, conditional on the same being taken out of the original box or bottle, and being delivered with a copy of the original directions for its use.

Lunatics (No. 4).—The Lunatics Ordinance, 1902, gives power to any constable to arrest without warrant any person wandering at large in such manner and under such circumstances as to denote that he is of unsound mind and that it would be dangerous to permit him to wander at large, and bring such person forthwith before the district magistrate for examination. The Ordinance empowers magistrates upon information being laid to issue warrants for arrest and production of persons deemed to be of unsound mind. Further powers of detention and treatment of lunatics are given by the Ordinance.

Currency (No. 5).—The Currency Note Ordinance, 1902, constitutes a Board of Directors with power to issue and reissue currency notes in exchange for full value in gold or silver coins legally current, or for notes of like value previously issued under this Ordinance. The note shall be a promise by the Government of the Colony to pay bearer on demand the amount thereof, which is to stand secured as a charge on the moneys and securities in the hands of the Directors and on the general revenue. The holder of the note is entitled to payment on demand in current coin, either gold or silver at the option of the Directors. The notes, subject to the

[1] Ordinances are made by the Legislative Board of the Turk's and Caicos Islands, and require the assent of the Administrator of the Government or of the Governor-in-Chief the Governor of Jamaica.

approval of the Secretary of State, may be for 5*s*., 10*s*., £1, and £3 sterling each. The guarantee fund for the notes is provided by the coin received in exchange for the notes, which is to be held by the Directors to meet payment of the notes and for no other purpose. Provisions are made for investment of the guarantee fund, the reserve of a depreciation fund, the keeping and audit of the Directors' accounts, and for the punishment of offences under the Ordinance and for forgery.

7. TRINIDAD AND TOBAGO.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1902)—35.[1]

Funds in Court (No. 1).—The Court Deposits Ordinance, 1902, provides for the closing of the accounts in the books of the Registrar of the Supreme Court and the Receiver-General of the Colony relating to Court deposits to the credit of any cause or matter or of any account opened under the Land Acquisition Ordinance, 1898, or of the Royal Order in Council dated February 3rd, 1851, which had been dormant for ten years preceding the Ordinance, and the transfer of the amounts standing to the credit of such accounts to the credit of general revenue, with a saving of the rights of claimants proving title before the Court to payment by the Receiver-General on the warrant of the Governor.

Immigrants (No. 2).—The Repatriation Fund Ordinance, 1902, charges all employers to whom immigrants are allotted after September 30th, 1902, with an additional fee of £1 11*s*. 6*d*., and authorises the Protector of Immigrants to deposit moneys paid under this Ordinance to an account entitled "Immigrants' Repatriation Fund" in the Government Savings Bank.

Sale of Liquor (No. 3).—The Liquor Licensing Ordinance, 1902, requires all persons dealing in intoxicating liquors to be licensed, and sets forth in ninety-two sections the rules, regulations, and general procedure for the administration of the law relating to the sale of intoxicating liquors.

Education (No. 4).—The Education Ordinance, 1902, constitutes a Board of Education consisting of the Governor as President and fourteen persons to be appointed by the Governor, of whom six shall be Roman Catholics and the remaining eight of some other denomination.

Prevention of Cruelty to Animals (No. 5).—This Ordinance provides

[1] Ordinances are made by the Governor with the advice and consent of the Legislative Council, and private and public Ordinances are numbered consecutively for the calendar year. Three important Ordinances—viz., the Property Devolution Ordinance, 1900 (No. 6, 1902); the Wills and Probate Ordinance, 1900 (No. 7, 1902); the Distributions Ordinance, 1900 (No. 8, 1902)—were to come into operation on July 1st, 1901. But by Ordinance No. 10 of 1902 this date was repealed and the date was to be fixed by the Governor by Proclamation. The Proclamation was made on June 25th, 1902, and provided that the Ordinances should come into force January 1st, 1903.

for the detention and treatment of diseased and unfit animals upon the conviction by magistrates of persons guilty of cruelty in respect of such animals.

Wills and Letters of Administration (No. 6).[1]—The Wills and Probate Ordinance, 1900, is consolidated with the Property Devolution Ordinance 1900, and is fixed to come into operation on July 1st, 1901. This Ordinance defines the jurisdiction of the Supreme Court in respect of probate and administration. In 123 sections the Ordinance declares the law generally with respect to matters of practice, procedure, and interpretation in connection with the probate of wills and the grant of letters of administration.

Devolution of Realty on Death (No. 7).—The Property Devolution Ordinance, 1900, is consolidated with the Wills and Probate Ordinance, 1900, and is fixed to come into operation on July 1st, 1901. This Ordinance declares that real estate shall on death, notwithstanding any testamentary disposition, vest in the executor or administrator of the estate of the deceased owner, subject to the rights of beneficiaries where the deceased was a trustee and with power to convey the legal estate to a beneficiary entitled, and to appropriate a part of the realty in satisfaction of a legacy or share in residuary estates to which a person is entitled under the Will of the deceased. (See note to No. 6.)

Intestates' Estates (No. 8).—The Distributions Ordinance, 1900, is consolidated with the Property Devolution Ordinance, 1900, and the Wills and Probate Ordinance, 1900, and is fixed to come into operation on July 1st, 1901. The Ordinance regulates the distribution of the estates of intestates, declares the law as to persons entitled to claim as next of kin and the rights of the Crown in default of kin. (See note to No. 6.)

Administrator-General (No. 9).—The Administrator-General's Ordinance, 1902, came into force on July 1st, 1902, and is consolidated with the Wills and Probate Ordinance, the Property Devolution Ordinance, and the Distributions Ordinance. The Governor is empowered on behalf of the King to appoint an Administrator-General for the Colony to administer in the absence of executors under a will, or of administrators under letters of administration, the estates of deceased persons of which the gross value shall not exceed £50 without probate or letters of administration, and with power to apply to the Supreme Court for letters of administration to the estate of any person, whether domiciled in the Colony or not, who shall have died possessed of real or personal property in the Colony

[1] The three Ordinances, Nos. 6, 7, and 8, 1902—to be cited as the Wills and Probate Ordinance, the Property Devolution Ordinance, and the Distributions Ordinance, 1900—were passed by the Council on December 17th, 1900, but did not receive the Governor's assent until March 26th, 1902. By Ordinance No. 10 of 1902 the coming into force of these three Ordinances was postponed until such day as the Governor by Proclamation should appoint.

intestate. The Supreme Court is empowered to make orders for the administration by the Court of the estates vested in the Administrator-General by this Ordinance. The estates under £100 in value of any lunatic person in the Colony are to vest in the Administrator-General as if such person were dead, and be administered by him for the benefit of the lunatic. (See note to No. 6.)

Corporal Punishment (Nos. 12 and 35).—The Corporal Punishment Ordinance, 1902, and Amendment Ordinance, 1902, regulate the ages and conditions and class of offences in relation to the infliction on convicted offenders of corporal punishment.

Affidavits (No. 13).—The Commissioners of Affidavits Ordinance, 1902, constitutes all stipendiary justices of the peace, clerks and assistant clerks of the peace, and wardens *ex officio* commissioners of affidavits for the districts in which they act, and empowers the Governor to appoint commissioners of affidavits and assign districts. All affidavits sworn before any commissioner in proceedings pending in the Supreme Court are to be as effectual as if sworn before one of the judges of the Court.

Agricultural Aids (No. 14).—The Cane Farmers' Advances Ordinance regulates loans to cane farmers on the security of the crops of canes by means of advance notes in the form provided in the schedule. Subject to rent, the charge on the land created by such advance notes is to take priority according to date of filing by the Clerk of the Peace in the district in which the land is situated. July 1st is fixed as the date up to which the advance note is to remain in force, and money then due may be sued for as a debt or be secured on next year's crop by a similar advance note. The canes are to be delivered in accordance with the terms of the advance note, and remedies for breach of this condition are provided by the Ordinance.

Public Health (No. 15).—The Sale of Milk Ordinance enables the Board of Health to make regulations as to the issue of licences to cow-keepers, dairymen, and other persons for the sale of milk.

Industrial Loans (Nos. 19 and 22).—The Sugar Planters' Refund and Loan Ordinance, 1902, constitutes a fund to consist of any sums granted by the Imperial Government for the relief of the sugar industry, and of loans raised under the Ordinance, such fund to be administered by the Receiver-General in accordance with the provisions of the Ordinance in providing—

(*a*) Refunds on the immigration tax on sugar;

(*b*) Assistance to cane farmers; and

(*c*) Advances on loan to the proprietors of estates.

All amounts refunded or advanced under the Ordinance must be applied in and about the cultivation of the plantation, and be subject to the various conditions and provisions contained in the Ordinance.

Agricultural Disease Prevention (No. 20).—The Agricultural Protection Ordinance, 1902, contains regulations and provisions for preventing disease

to trees, plants, or vegetables caused by any insect or fungus, or otherwise as may be declared by Proclamation of the Governor.

This Ordinance of twenty-nine sections is to come into operation on a date to be fixed by the Governor by Proclamation, which is defined to be a notification by the Governor published in the *Royal Gazette*. (It does not appear whether this Proclamation has yet been made.)

Vaccination (Nos. 23 and 31).—The Passengers Vaccination Ordinance, 1902, makes it compulsory on all persons coming from any port or place declared to be infected with smallpox under the provisions of the Quarantine Ordinances before landing in the Colony—

(*a*) To submit to vaccination;

(*b*) To satisfy the medical officer of the port that he has been vaccinated within two years.

Various penalties and powers to enforce the provisions of the Ordinance are provided.

Petroleum (No. 24).—The Petroleum Ordinance, 1902, amends a like Ordinance of 1895, and empowers justices to grant to any person named by the Governor a licence for the sale of crude petroleum, whether or not the same be dangerous petroleum within the meaning of the principal Ordinance.

Legal Oaths (No. 25).—The Oaths Ordinance, 1902, enables persons stating that they are without belief in religion, or that an oath is contrary to their religious belief, to make an affirmation instead, and regulates the mode of taking and registering all official oaths.

Taxation (No. 26).—The Land Tax Ordinance, 1902, exempts from land and house taxes, and town and borough rates—

(*a*) Churches, chapels, and other places of public worship;

(*b*) School-houses, offices, and playgrounds of any school established under the Education Ordinances, 1890-1902;

(*c*) Hospitals, asylums, almshouses, and institutions for the relief of the poor.

Quarantine (No. 27).—The Quarantine Ordinance, 1902, amends like Ordinances, 1893-1894,and enables the Governor by Proclamation to prohibit the importation into the Colony of animals, goods, and articles (except letters and passengers' personal effects) from any port declared to be an infected place under the Quarantine Ordinances, 1893-1894.

Immigration Tax (No. 30).—The Ordinance for raising funds in aid of immigration for the year 1902 imposes for that purpose export taxes on sugar, molasses, rum, cocoa, coffee, cocoanuts, and copra raised or manufactured in the Colony.

Immigration (No. 33).—The Immigration Ordinance, 1902, is consolidated with and amends the principal Ordinance, 1899, and the Repatriation Fund Ordinance, 1902, and these three Ordinances are to be cited as the Immigration Ordinances, 1899 and 1902. The Ordinance amends the

principal Ordinance in respect of the fees payable on indentures, the term of indenture, the immigrant's rations, hospitals, visits of medical officers, ill-usage, and the punishment of the immigrant by fine or imprisonment for absenting himself from work or refusing or neglecting to carry out directions of persons in authority.

Slaughterhouses (No. 34).—The Port of Spain Slaughterhouses and Inspection of Food Ordinance, 1902, empowers the Port of Spain Town Commissioners to provide slaughterhouses in Port of Spain and issue licences and regulations in respect thereof.

8. THE WINDWARD ISLANDS.[1]

[*Contributed by* ALEXANDER MANSON, ESQ.]

(i) GRENADA.

Ordinances passed—14; Orders and Regulations—24.

Bicycles (No. 1).—"Bicycle" includes tricycles and velocipedes; and "highway" includes all places to which the public have access. Riding in a manner dangerous to the public, neglecting to stop when a peace officer calls on him to do so, not giving correct name and address, are offences for which a cyclist is liable under the Ordinance, and so also are breaches of rules made under it. Any offender is liable on summary conviction to a fine not exceeding £5. The rules made under s. 5 are six in number: two of them relate to turning corners; one orders bicyclists to use a bell when approaching a corner or in a crowded thoroughfare, and "when within twenty yards from and before overtaking any vehicle or person riding on any animal or bicycle." Rule 5 regulates the speed to a maximum of eight miles an hour within town boundaries, and sixteen miles an hour outside. Obstruction and refusal to make way are made punishable.

Trustees' Investments (No. 2).—This is an Ordinance to take advantage of the conditions contained in the Imperial Parliament's Colonial Stock Act of 1900, so that Grenada Government registered securities may become available to trustees in the United Kingdom for investment.

Schools.—No. 3 refers to schools; its place is taken by No. 14 below.

Public Health (No. 4, repealing No. 4 of 1895).—The Governor and Executive Council are constituted to be the General Board of Health for the Colony. The Board is to divide the Colony into sanitary districts, and the Governor is to appoint sanitary authorities in the districts. All members of the police force are made *ex officio* sanitary inspectors, subject to the Board's regulations. Power is taken for appointing sub-

[1] The Windward Islands include only the group of Colonies under the three administrations of (i) Grenada, (ii) St. Lucia, and (iii) St. Vincent.

ordinate staff. By ss. 29 and 30 the revenues of the Colony for general sanitary measures, and in the case of towns their municipal rates, are made liable for the necessary expenses.

The local authorities are empowered to provide for cleansing of streets and removal of refuse; to compel owners and occupiers to purify houses and premises; to repress certain nuisances—(*a*) keeping swine in a town; or (*b*) keeping them elsewhere in such way as to be a nuisance; (*c*) (*d*) allowing stagnant water, sewage, etc., to remain.

Fines are ordained for such nuisances; and also the local authority is empowered to interfere to abate the nuisance and levy costs. Various forms of nuisances are defined and made punishable, and power is taken to add to the list by regulations. Local authorities are required to inspect and call for abatement of nuisance; and any person aggrieved may complain of a nuisance. For failure to abate a nuisance as required by notice the offender is to be summoned before the magistrate, who then has full power to deal with the matter.

Other powers relate to closing houses not fit for habitation, for punishing infringements of orders for abating nuisances and levying the necessary costs.

S. 21 gives the local authority power to enter houses and premises (in daylight). S. 22 makes special provision as to ships. S. 23 enables the Board to make regulations for prevention of contagion, and for hospital treatment and other general sanitary matters.[1]

Quarantine.—No. 12 may be mentioned here; it amends the Ordinance of 1895, and is in similar terms to Ordinances in several of the other Colonies on this subject.

Supply.—Nos. 5 and 8.

Public Holiday.—No. 6 makes June 26th and 27th, 1902, public holidays to celebrate the Coronation.

Roads.—No. 7 amends the Roads Ordinance (No. 22 of 1891) and gives the Governor in Council power to order inspection of roads and to take a road out of the jurisdiction of a road board when the board neglects it, after notice given.

Partition (No. 9, repealing Act No. L. of 1872).—S. 3 interprets "land," "disability," and "Court"; the last means the Supreme Court of Grenada. By s. 4 co-tenants in "lands" can compel severance. SS. 5 to 8 provide for application to the Court, giving of notice and service of notices. The Court has power to make orders and give necessary instructions. S. 9: the Court may order sale of the property and division of proceeds in cases where desirable. S. 11: the Court may make enquiries, and persons notified may be made parties. There are provisions also for dispensing with notices, for compensating tenants in cases of sale. S. 20 enacts that partitions must be made under this law or by deed: otherwise they

[1] This law compares with St. Vincent, No. 3 of 1901.

are void at law. S. 21 gives summary powers in cases where the value does not exceed £300.

Tenants' Compensation (No. 10, amending Tenants' Compensation Ordinance of 1900).—S. 18 is repealed, and the points which the award shall specify are detailed. An award for compensation generally is not enough. S. 21 is added to by a provision that awards shall not be questioned otherwise than as provided. A new section (22) is enacted giving an appeal to the Supreme Court where the claim for compensation exceeds £20, and to the District Magistrate where it is less than £20. Two new sections are added providing for recovery of the award and costs, and for making a scale of costs.

Water Supply (No. 11; there are forty-eight sections).—Five districts are constituted under this Ordinance, and the Government has power to subdivide and vary them, to appoint a water authority for each, and to approve or disallow by-laws to be made by such authorities.

The water authority, subject to that approval, has power to make rules for conduct of business and by-laws for the regulation of matters connected with the water supply, also to fix a rate each year, not exceeding 7 per cent. on the rental value of lands and houses. The assessment lists are to be published and objections heard, and appeal is allowed to the magistrate. S. 20 puts the water rates on a similar footing to the land and house tax assessments (Ordinance of 1891). There are powers to raise loans, construct works, and to make a sinking fund for loans.

SS. 27-33 relate to supply of water to private houses. SS. 34-36, acquisition of necessary property. SS. 37-41, also 43-46, provide for some miscellaneous matters, including penalties. S. 42 empowers the Government to interfere where a water authority neglects its duty.

Public Officers.—No. 13 deals with travelling allowances. Orders and regulations made by the Governor in Council include by-laws under the Town Boards Ordinance of 1901 for conducting elections, and instructions for annual estimates; levy of Court fees in various courts; fees under the Marriage Ordinance of 1900 and rules for registrars; regulation of boats in the harbour of St. George; harbour regulations; rules of the General Board of Health for sanitary inspection; regulations about vaccination; rules under the Quarantine Ordinance.

(ii) SAINT LUCIA.

13 Ordinances; 8 Orders in Council; 8 Regulations.

Pensions.—No. 1 deals with pensions and gratuities in the public service, with rules.

Married Women (No. 3).—This law gives powers to District Courts to hear summarily without jury the application of a married woman seeking

relief against her husband; and to pass orders (*a*) for separation, (*b*) for custody of children under sixteen years, (*c*) for a weekly allowance not exceeding £2, (*d*) for costs of the proceeding.

Excise and Customs.—Nos. 2, 7, and 8 relate to excise matters and customs tariff. A proviso is added to the Liquor Licence Ordinance of 1886 enabling a consignee to sell from a ship or from bond in certain cases, and a money allowance is given to certain of the military in lieu of exemption from import dues.

Judicature (No. 9).—In Civil Court claims and matters value not exceeding £100, the Royal Court is given summary powers to decide without requiring written pleadings. The judge, subject to approval of the Governor in Council, is to frame rules of practice and tariff of fees.

Cattle (No. 10).—This takes the place of an Ordinance of 1889. Owners of cattle of all sorts are required to register the brands they propose to use, and these are subject to approval. Butchers must have a licence, and slaughter by others, and dealing with skins, and other matters connected with cattle, are brought under police supervision.

Elementary Education (No. 11).—This law, which takes the place of one of 1889, leaves it to the Governor in Council to put it in force in such towns and areas as he may prescribe; it applies to children from six to fourteen years, but the question of age is left to the opinion of the Court in hearing complaints.

Vaccination (No. 12, amending the law of 1881).—Persons arriving from any infected port or place, and not having proof of having been successfully vaccinated within ten years, are liable to be vaccinated. Those not complying are liable to fine or three months' imprisonment.

Quarantine.—No. 13 corresponds to No. 12 for Grenada above mentioned.

Orders in Council.—No. 1 contains additions to the schedule of articles exempted from the customs tariff—viz. (1) chemicals and apparatus required for scientific purposes, and (2) stock imported for improving the breeds of animals. Nos. 3 and 7 check the import of cattle from Porto Rico and St. Vincent owing to outbreaks of glanders and anthrax. Nos. 5 and 8 forbid imports from Barbados owing to smallpox.

Regulations.—No. 1 relates to the landing and storage of petroleum for sale—its testing, and charges for warehousing. No. 3 provides for reservation of some portions of Crown lands and the sale of others in lots. No. 4 is under the Ordinance 8 of 1886 for storage of rum. Nos. 5, 6, and 8 put in force the laws relating to sanitation and contagious diseases. No. 7 amends the prison rules.

(iii) ST. VINCENT.

20 Ordinances.

Pensions (No. 1).—This Ordinance provides for the granting of pensions to officers in the service of the Colony. No pension is to be granted to any public officer under fifty-five, unless on medical evidence of mental or bodily infirmity. Pensions are to cease on bankruptcy.

Volunteer Force (No. 2).—By this Ordinance the Governor is empowered to accept the services of any persons desiring to be formed into a Volunteer Corps and offering their services for a term certain of three years. Powers are given to the Governor to organise the force into regiments and battalions, to make regulations, appoint officers and instructors, administer the oath of allegiance, supply arms and appointments, and declare the tests of efficiency.

The force may be called out by the Governor at any time for actual military service, either in aid of the civil power or in case of war. In such event officers and volunteers are to be paid at the rates allowed to the corresponding grades in His Majesty's service. In case of death in actual military service provision is to be made out of the general revenue for the wife and family.

Provisions are made for the maintenance of discipline and for convening courts-martial and courts of enquiry. The corps, may, subject to the approval of the Governor, make their own rules for the management of the property, finances, and civil affairs of the corps. Obstructing volunteers at their drill may be punished with a fine of £5. By s. 6 regulations in force in England are made applicable as far as may be suitable to the Colony. The commanding officer of the Volunteer Force when on actual military service may impress boats, carts, waggons, men, horses, or teams as the service may require, and the crews of merchant-men lying near any seaport which may be attacked. The men impressed are to be entitled to compensation out of the general revenue.

Colonial Stock Act, 1900 (No. 3).—This Ordinance facilitates investment under the above Act of trust and other funds in the United Kingdom in St. Vincent Government securities.

Customs (No. 4).—Coal is exempted from import duty, and power is reserved to the Governor in Council from time to time to alter the table of duties and rates under the principal Ordinance (the Customs Duties Ordinance, 1895).

No. 20 is also a Customs Ordinance; it increases by one-tenth certain Customs duties for 1903—namely, those specified in s. 5 of the principal Ordinance (Customs Duties Ordinance of 1895).

Tonnage Dues (No. 5).—Steam vessels coaling only are exempted from tonnage dues.

Agricultural Schools (No. 6).—Repealing certain parts of the Agricultural

Schools Ordinance of 1900, replaced by regulations under an Order in Council of April 4th, 1902.

Medical Officers (No. 7).—This Ordinance consolidates the law with regard to public medical officers. The Colony is divided into medical districts, and authority is given to the Governor to appoint a Colonial Surgeon and other salaried medical officers for the Colony and the districts into which it is divided.

The duties of a medical officer are to afford free medical aid to paupers, labourers' children under ten, labourers over sixty, and any destitute woman in childbirth, to vaccinate, to give evidence at inquests, to attend any Government hospital, inspect places where meat, poultry, fish, or other articles of human food are sold or any spirituous or fermented liquors, to inspect once every quarter every town or village in his district and make a quarterly report, to certify the causes of death, and act generally as health officers.

An extra shilling is allowed the medical officer for every primary vaccination. Medicines are to be supplied from Government dispensaries.

A person obtaining medical aid by false pretences is liable to a fine of 40*s*.

Naturalisation of Aliens (No. 8).—By this Ordinance real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject. An alien may be naturalised after a residence in the island of not less than five years.

Deceased Citizens of United States (No. 9).—This Ordinance confirms a convention between the United Kingdom and the United States as to the protection and administration of the estates of United States citizens dying in the Colony.

Income and Land Tax.—No. 11 provides chief assessors for the purpose of the Income and Land Tax Ordinances, 1887-1897.

Supply.—Nos. 12 and 14 are Supply Ordinances.

Public Officers' Security.—No. 15 regulates the manner in which public officers are to give security. The security may be given by a guarantee or assurance association.

Quarantine. (No. 17: corresponds to No. 12 for Grenada and similar Ordinance for St. Kitt's).—The Governor in Council may prohibit the importation of goods from any infected place on such terms as he thinks proper.

An Order in Council of March 22nd, 1901, makes elaborate regulations under the Land Settlement Ordinance, 1899.

9. THE LEEWARD ISLANDS.

[*Contributed by* ALEXANDER MANSON, ESQ.]

ACTS OF THE GENERAL LEGISLATIVE COUNCIL.

Acts passed—15.

Weights and Measures.—No. 1 amends the Weights and Measures Act, 1872, as to the mode of ascertaining the capacity and contents of casks of spirits, and directs the use of calipers with head and bung rods.

Deceased Citizens of U.S.A. (No. 2).—This provides for notice being given to the United States Consul of the Presidency of the death of a citizen of the United States having real or personal property in the Colony, and without any known heirs or testamentary executors.

Allowances to Witnesses in Criminal Proceedings (No. 3).—By this Ordinance allowances may be made to witnesses in criminal cases in the Supreme Court according to a scheduled scale, in addition to travelling expenses not exceeding 6*d.* per mile one way. The rates are: Medical practitioners, £1 1*s.* per diem; planters, merchants, bankers, 6*s.*; tradesmen, clerks, overseers, 3*s.*; artisans, 2*s.*; labourers and domestic servants, 1*s.*

Supply.—No. 4.

Judicature: The Supreme Court (No. 5).—The first six sections reconstitute the Supreme Court. SS. 7 to 10 arrange the circuits for the several Presidencies, namely, Antigua, St. Christopher, Dominica, and Montserrat—separate circuits for Anguilla, Nevis, and the presidency of the Virgin Islands are done away—the Circuit Court at St. Christopher taking their place. S. 11 provides for the Court to sit in appeal in Antigua in January and July. S. 12 enables one judge to act for the Court when the other is absent. SS. 13 and 14 deal with the appellate jurisdiction; and s. 15 provides for the construction of certain other enactments. SS. 16, 17, and 18 arrange for the annual valuation in August.

Police Pensions.—No. 7 provides for the grant of pensions to non-commissioned officers and privates of the police force after twenty-one years' service, or in case of decease after twelve years; the pension is not to exceed one-third of the pay. In cases short of these periods a gratuity may be granted. Pensions may be withheld or reduced for misconduct.

Summary Jurisdiction.—No. 9 confers additional powers on the "clerk" under the Summary Jurisdiction Act, 1874—*e.g.*, to hear and give judgment in undisputed cases of contract and in default cases.

Stamps.—No 10 amends the Leeward Islands General Stamp Act, 1890.

Pensions (No. 11).—This Act provides for payment of pensions out of the revenue to officers other than non-commissioned officers and privates of the police force of the Colony. No pension is to be granted to any public

officer under the age of fifty-five years, and then only on a certificate as to diligence and fidelity from the head of department.

A pension is not to exceed two-thirds of the guaranteed salary. A public officer may be compulsorily retired at any time after sixty. A pension is not assignable or attachable, and ceases on bankruptcy.

Prisons (No. 12).—Prisoners sentenced to hard labour may be kept to hard labour without the walls of the prison as well as within.

Supply.—No. 13.

Public Officers' Guarantee Fund.—No. 14 provides for contribution in certain cases by the Government towards the security to be given by a public officer.

Naval and Military Uniforms (No. 15).—This Act prohibits any person not serving in His Majesty's military forces wearing, without the Governor's permission, the uniform of any of those forces, or any dress resembling it. Members of a public band and persons performing in a stage play are exempted. Bringing contempt on the uniform is punishable by a fine not exceeding £10, or imprisonment not exceeding one month.

(i) ANTIGUA.

Ordinances passed—11.

Surgery and Dentistry.—No. 3 enables the General Legislature of the Leewards Islands to pass laws for regulating the professions of surgery and dentistry so far as Antigua is concerned.

Supply.—Nos. 5 and 10.

Taxation.—No. 6 exempts goods imported for the use of His Majesty's land and sea forces and for the use of the Governor or Government from Package Tax.

Public Health (No. 7).—This Ordinance—similar to Ordinance No. 12 of St. Christopher and Nevis—is for the preservation of the public health in the country districts of the Colony. The Governor is to appoint a Board of not less than five or more than seven to carry out the provisions of the Ordinance, four of the Board to be representative of the four country districts of the Island. The Board is to meet once a month and to exercise sanitary superintendence over the roads, public tanks, ponds, wells, wharves, and public markets in any of the towns and villages of the Island, and is to provide for the cleanliness of such towns and villages, and the removal of all dirt, rubbish, and filth, for which purpose the Board may frame rules with penalties attached. District boards of health may also be appointed, and every district medical officer is to be *ex officio* a member of the district board of his district. There are further provisions prohibiting obstruction of drains and sewers, and pollution of streams, regulating slaughter-houses, and giving power to inspect shops and

buildings where meat, poultry, fish, or other articles of food are sold. Owners of houses are to keep the house and enclosures clean and clear of any decaying animal or vegetable matter. The Board may by notice require premises to be cleaned and whitewashed. No dead body is to be kept more than thirty hours without interment.

Prisoners of War.—No. 8 provides for punishment in matters affecting the safe custody of prisoners of war.

Liquor Licences.—No. 9 sanctions (1) tavern licences, for liquors, excepting rum, to be sold retail from 6 a.m. until 9 p.m.; and (2) canteen licences, for persons authorised by the Military Department to sell to prisoners of war.

Harbours.—No. 11 regulates harbours and apportions the fees leviable for permission to visit roadsteads and board vessels between 6 p.m. and 6 a.m.

(ii) DOMINICA.

Public Officers' Guarantee Fund.—No. 6 declares that it is competent to the General Legislature of the Leeward Islands under s. 10 of the Imperial Act of 1871 to make laws for the fund, and validates what has been done.

(iii) MONTSERRAT.

Medicine and Surgery (No. 1).—By this Ordinance it is declared to be within the competency of the General Legislature of the Leeward Islands to make laws in respect of the Presidency of Montserrat as to (1) the qualification of practitioners in medicine and surgery, and the practice thereof, and the sale of medicine; and (2) the qualification of surgeon dentists and the practice of dentistry.

Constitution (No. 2).—In place of the old Legislative Council a Legislative Council of the Presidency of Montserrat is constituted. This Council is to consist of the Governor and the Commissioner, and such persons not exceeding four as the King may appoint as official or unofficial members of the Council. There must be two members present besides the Governor for the despatch of business. A seat on the Council may be vacated by a member becoming bankrupt or being convicted of a criminal offence or absenting himself for more than three months from the Presidency without the Governor's leave.

Passengers.—No. 3 empowers the Governor in Council to make rules regulating the number of passengers to be carried in ships between the Presidency and other Islands of the Colony.

Supply.—No. 4.

(iv) ST. CHRISTOPHER AND NEVIS.

Medicine and Surgery (No. 1).—This is an Ordinance enabling the General Legislature of the Leeward Islands to make laws for the Presidency with regard to the qualification of medical and surgical practitioners, the sale of medicines, and the qualification of surgeon dentists and the practice of dentistry.

Supply.—No. 2.

Trade and Revenue (No. 6).—This is an important consolidating Ordinance. Eighteen laws from 1868 to 1898 are amended and consolidated into a code of 141 sections with eleven schedules. The law does not appear to be materially altered, but it is brought into a much simpler form.

Sugar: Suspension of Duties (No. 7).—This measure was passed to relieve the critical condition of the sugar-growing industry. The Government retains power to levy the taxes in cases where the cultivation is not maintained.

Liquor Licences (No. 8).—Courts for considering licensees' applications are to be held quarterly; intending applicants for new licences are to give notice.

Wild Birds Protection (No. 9).—A close time is established from February 1st to August 31st, and penalties are prescribed for killing or wounding the scheduled birds, and for taking or injuring eggs or nests.

Health (No. 12).—This Ordinance provides for a Central Board of Health for St. Christopher and Nevis respectively, to be composed of not less than five members, to exercise sanitary superintendence over the whole of each Island. These Boards are empowered to make rules regulating, *inter alia*, the traffic in meat and the slaughtering of animals, for securing cleanliness and promoting the health of the inhabitants, and for preventing the spread of epidemic, endemic, contagious or infectious diseases.

The Governor may proclaim any part of either Island a sanitary district and appoint a board of health for each district. Any one interfering with an officer of either the Central or District Board is to be liable to a penalty of £20, or six months' imprisonment. There are provisions for removing overhanging trees or hedges, for preventing damage to drains, obstruction of traffic, nuisances in slaughter-houses and bakeries, and for inspection of markets and houses. No dead body is to be kept unburied more than thirty hours.

Infectious Diseases (No. 13).—This Ordinance empowers the Governor to appoint a local authority to carry out the provisions of the Ordinance, and such local authority is to provide hospitals for the reception of the sick, and mortuaries. It may also give notice to the owner or occupier of any house to cleanse and disinfect, and may direct the destruction of clothing, bedding, etc., exposed to infection, and may remove persons suffering from any infectious disorder to a hospital.

There is a penalty for exposing infected persons or clothing in any public place and for letting infected houses.

Notice of any infectious disease is to be given by the head of the house to the district medical officer, who is to communicate it to the local authority. In case of epidemic, regulations may be made for the speedy interment of the dead.

(v) THE VIRGIN ISLANDS.

Constitution.—No. 1 relates to the Constitution of the Presidency. Under s. 10 of 34 & 35 Vict., c. 107, being the Leeward Islands Act of 1871, the Island Legislature puts it within the power of the General Legislature to alter the Constitution of this Presidency.

Supply.—Nos. 2 and 5.

Mongoose.—No. 7 is an Ordinance to prohibit the introduction of the mongoose. Introducing, harbouring, or keeping any mongoose is made punishable with six months' imprisonment or £100 fine. The law empowers any person to seize and destroy, and a justice of the peace or Government officer to enter premises during the daytime to search for, seize, and destroy any mongoose.

Constitution (No. 16).—By this Act the Legislative Council of the Virgin Islands and all its functions and privileges are from the commencement of the Act to cease and determine, the Island Legislature having by resolution declared it to be expedient that power to make laws upon all subjects whatsoever for the Presidency of the Virgin Islands should be vested by the General Legislature in the Governor.

Church (No. 17).—The Synod of the Diocese of Antigua is hereby constituted a body corporate.

X. MEDITERRANEAN COLONIES.

[*Contributed by* ALBERT GRAY, ESQ.]

1. CYPRUS.

Laws passed—7.

Civil Process.—In case of execution in civil actions issued against any agriculturist, certain cereals are to enjoy exception—that is to say, all chopped straw, wheat, or barley to the extent of one hundred kilos, and oats or vetches to the extent of fifty kilos. The Law (No. 4) is in force for one year only.

Agricultural Loans.—The Loan Commissioners are authorised to make

loans to persons or village communities for establishing any agricultural or manufacturing undertaking, including plant and apparatus in connection therewith. The obligations of village communities under this Law (No. 7) are governed by the Village Communities Law of 1901, noticed in our "Review" last year.

2. GIBRALTAR.

Ordinances passed—14.

Marriage.—The Marriage Laws are amended by a provision (Ordinance No. 7) that where either of the parties is a foreigner, notice of the marriage is not to be accepted, and the marriage is not to be solemnised, until a certificate is produced from the consul of the foreign State in Gibraltar that the requirements of the law of that State in regard to marriage have been met, unless the Governor thinks fit to dispense with the certificate.

Carrier Pigeons.—In our "Review of the Legislation of 1901" we noticed a Law for the regulation of carrier pigeons at Malta. That law is now followed by Gibraltar in somewhat more stringent terms. The importation or keeping of these pigeons is prohibited, except by permission of the Governor and subject to such conditions as he may prescribe. Provision is also made for warrants for searching ships for the discovery and seizure of pigeons kept in contravention of the Law.

Flogging.—Another Ordinance (No. 11) regulates punishment by flogging. Sentences are limited to twenty-four strokes for an adult, twelve for a juvenile offender, and six for a child. The same limitation applies to prison offences, and no females may be sentenced to flogging, either by the Courts or in prisons.

3. MALTA.

Ordinances passed—10.

None of these Ordinances calls for special notice. They consist of Appropriation Acts, small private Acts, and trivial amendments of previous Laws.

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NOTES.

Branches of the Society.—The Journal for August, 1903, contained a long list of branches of the Society recently formed in different parts of the Empire to co-operate in the Society's work. In addition to these, branches have now been formed or are being formed in the Bahamas (under the Presidency of the Chief Justice), in Barbados (under the Presidency of the Chief Justice), in Fiji (under the Presidency of the Governor), in New South Wales, in the Orange River Colony, in the Sudan, and in Western Australia. Contributions have also been sent or promised by Bengal, British Honduras, Burma, British Guiana, Egypt, Fiji, Gold Coast Colony, Grenada, Mauritius, North-West Territories of Canada, St. Lucia, Seychelles, Straits Settlements, and Trinidad. This co-operation is very gratifying, and will, it is hoped, materially aid in promoting the unity of the Empire. Later on, when the scheme is more completely organised, it is proposed to hold a general meeting and conference of the Society in London, at which it is hoped that representatives of the various branches of the Society will be present.

In the meanwhile it may be convenient to state here that what the Society principally needs is (1) a copy of the local Statutes for each year—just now for 1903 (if not already sent); (2) half-yearly reports of any decisions of interest in the Supreme Courts; and (3) notes on any matter of legal interest, such as reports by Commissioners or draft Bills or Ordinances. For such help the editors will be greatly obliged.

A French View of the American Constitution.—We are indebted to Mr. Bryce for the following notice of an interesting work presented to the Society by the kindness of the Société de Législation Étrangère:—

"*Les Chartes coloniales et les Constitutions des États-Unis de l'Amérique du Nord.* Par Alphonse Gourd, Avocat à la Cour de Lyon, Docteur en Droit, Député du Rhône. Tome iii.—La Constitution Fédérale. (Paris: Imprimé par ordre du Gouvernement à l'Imprimerie Nationale. MDCCCCIII.)

"This portly volume is the third of a series intended to cover the whole field of American constitutional history prepared by the order of the French Government under the direction of the Société de Législation comparée. The first volume, which appeared in 1885, contained an historical sketch of those English Colonies in North American which ultimately became the United States, followed by the text of a number

of important instruments bearing on North American history, from the letters patent given by the Catholic kings to Christopher Columbus in 1493 A.D. down to the English charter of Georgia in 1732. Vol. ii., also published in 1885, gave an account of the government and administration of the North American Colonies while subject to the British Crown, a proper and necessary introduction to the constitutional arrangements of the United States as they now stand. This third volume, just published, is devoted to the Federal Constitution. It consists of three short introductory notices: of the circumstances which led to the Declaration of Independence of 1776, of the conditions which produced the Act of Confederation of 1777-81, and of the state of things and progress of opinion which brought about the preparation and adoption of the Federal Constitution in 1787-8. These prolegomena are followed by an elaborate commentary upon the Constitution itself, section by section and clause by clause. It is a commentary of a kind unfamiliar to the American, or indeed to the English, reader. It contains very full references to the constitutions of the several States and to the Statutes which have been passed by Congress to carry out divers provisions of the Constitution. It describes in some instances a good deal of the actual administrative provisions made for the government—*e.g.*, the present strength and organisation of the army and navy, the present condition of the public debt, the arrangements for the government of Porto Rico and the Philippine Isles (these in an appendix of additions and corrections), and a useful list of treaties concluded with foreign Powers. All these belong to the realm of the actual. But the commentary on the Constitution is in many places, if not quite an *a priori* view of what the words ought to mean, still rather a meditation upon the words considered in their connection with the wishes of the framers and the needs of the country, and sometimes indicating the application which has, in fact, been made of them, than a strictly legal examination of their actual force and effect. This, indeed, could not have been given without constant references to the interpretation placed upon the words by the Federal Courts; and such references are not here supplied, partly perhaps because the subject is vast, and has been dealt with in so many American law-books. For instance, to take the most familiar of all instances, there is not a word in the commentary on the clause forbidding a State to pass any law impairing the obligation of a contract to indicate the very wide sense that has actually been given to the term 'contract,' and the endless difficulties that have arisen in the application of this provision. Thus the commentary, though careful and intelligent, is not such an explanation of the instrument in its practical working as an Anglo-American student would expect. The author is almost as warm an admirer of the Constitution as Tocqueville was, and certainly warmer than are many Americans at the present day. He quotes the language of Mr. Justice Story more than half a century ago, and of Mr. Bancroft in 1883, as evidence of the success of the Con-

stitution, and the reverence of Americans for it. But much has happened since then; and although the fundamental instrument is certainly in no danger, and continues to be respected and valued, there are recent currents of criticism upon it which ought not to be forgotten.

"A bibliography is appended to the volume which is useful in giving many writings bearing on American history which have become unfamiliar to the reader of our own day. It is not, however, by any means a complete list. Such obvious older books as Marshall's *Life of Washington* and Elliott's *Debates* do not appear in it; nor among more recent works does one find Tilden's *Life*, for instance, nor the very acute treatises of Mr. Henry Jones Ford, nor the Johns Hopkins University Studies, and other similar Studies issued by other universities, in many of which there is valuable matter. As some English books remotely bearing on Anglo-American constitutional notions are included, it is strange not to find such works as Walter Bagehot's *English Constitution* and Albert Dicey's *Law of the Constitution* included in the list.

"M. Gourd's treatise, taken as a whole, is very serviceable, since it contains a great deal of carefully digested information and shows a thorough familiarity with the texts. It is an agreeable witness to the interest which American constitutional history continues to excite in the countrymen of Tocqueville; and it has the great merit of being permeated by a sense of the relation of American institutions to the common law of England."

"Trade Unionism and Legislative Reform."—In the case of *The Glamorgan Coal Company* v. *The South Wales Miners' Federation* ([1903] 2 K.B. 545), referred to in the above article by Mr. Chalmers-Hunt, it was inadvertently stated in the course of editorial revision (pp. 161 *n.* and 182 *n.*) that the House of Lords had affirmed the decision of the Court of Appeal in that case. This is incorrect; the appeal is still pending, and the editors tender Mr. Chalmers-Hunt an apology for an error which was not his.

Mr. Chalmers Hunt desires to add that "the comment on pp. 175-6 upon the extract from the judgment of Mr. Justice Wright in *Allen* v. *Flood* was misconceived, inasmuch as to pay a person not to pay an existing debt is to interfere with an existing obligation, contractual or otherwise, *i.e.* to procure a wrongful act."

"Estate Duty" in Germany.—The following note, for which the editors are indebted to Mr. Ernest Schuster, is an instructive sidelight on English death duties:—

"In an article contributed to the last issue of this Journal the Duke of Argyll gives an interesting summary of the death duties charged in certain foreign countries, which, as he says, 'form an instructive commentary on our English present experiment.' If we compare any particular branch of the taxation of one country with the corresponding branch of taxation in another country, it is above all necessary, in each case, to ascertain what place the particular branch of taxation occupies in the general scheme.

His Grace overlooks the fact that there are two entirely distinct kinds of death duties, which Sir William Harcourt on the introduction of the Budget of 1894 (Hansard, vol. xviii. p. 485) respectively designated as the *A* and the *B* class of duty.

"The *A* class of duty is a duty on the corpus of the property belonging or enjoyed by the deceased at the time of his death; the *B* class of duty is a duty on the interest taken by each person taking a benefit by reason of his death.

"The *A* class of duty (estate duty) is charged without regard to the destination of the property passing on the death of the deceased; the *B* class of duty (legacy duty or succession duty) is assessed at a rate varying according to the relationship existing between the predecessor and the successor, and in the case of the nearest degrees of relationship disappears altogether under the present law. The foreign death duties to which the Duke of Argyll refers are all duties of the *B* kind, and their study therefore throws little light on the English estate duty which was introduced by the Act of 1894. In order to find out whether any and what duties corresponding to the British estate duty exist in foreign countries, we must examine the nature of the tax. The estate duty is a duty charged on the corpus of the property of the deceased, and takes the place of yearly taxes on the capital value of property, which in many countries are charged concurrently with income tax either on the whole value of the taxpayer's property or on the value of certain portions thereof. Income tax is generally payable at the same rate on trade profits and professional earnings, as well as on the revenue derived from property or from investments. This anomaly, for which a remedy has frequently been sought in the United Kingdom, is to a certain extent rectified by the estate duty, which is in the nature of a postponed tax on the property and the investments from which income, not being the result of personal work, is derived. In many continental countries the same object is attained by the imposition of a yearly tax on corpus or on income from invested funds, which is levied together with the tax payable on income derived from all sources. In the Kingdom of Prussia the expression 'Ergänzungssteuer' (supplementary duty), by which this tax is called, expresses the idea that it is to be an addition to the income tax intended to affect the owners of property as such, and to differentiate them from persons whose whole income is derived from the exercise of a trade or profession. The Prussian tax (which was imposed in 1893) is a low one, amounting only to one-twentieth per cent. of the value of the corpus in each year, but if any person lives for a certain number of years after acquiring any property or investments, by inheritance or otherwise, the total amount paid (allowing for interest) will in many cases be equal to or exceed the amount of the estate duty which, if the capitalist were domiciled in the United Kingdom, would be payable at his death. In Bavaria there is, in addition to the ordinary income tax,

a tax on income from funded capital (Kapitalrentensteuer) at a progressive rate rising to 4 per cent. (which, assuming the capital being invested at 4 per cent., is equal to a yearly tax of about one-sixth per cent. on the capital), and similar taxes exist in other German States.

"Yearly taxes on the value of the corpus of property, going side by side with the general income tax, are also levied in many of the Swiss cantons. In the Netherlands there is a yearly tax on the corpus at a progressive rate rising to one-fifth per cent.

"It is with taxes of this nature that the estate duty must be compared if the comparison is to be fruitful; but if a comparison be made, it is not quite clear why it should be used as a 'commentary on our English present experiment,' and why the English legislation on the subject should be more in the nature of an 'experiment' than the legislation of foreign countries? The Prussian Reform, which has set the example to other German States, dates from 1893; the Bavarian Law to which I have referred from 1899; the Wurtemberg Government is at the present moment engaged in the preparation of a new scheme of income tax and property tax The Netherlands Law dates from 1892. These dates show, at any rate, that in a large number of European States the system of the taxation of property as distinguished from the taxation of professional and trade income is in its present shape as recent, and therefore as much in the nature of an experiment, as the British system.

"The Prussian Reform was initiated by Miquel, a man of masterful mind who, in this instance, used his large power over the Conservative parties for an object of a distinctly democratic character, but who, well knowing the idiosyncrasies of his supporters, was too wise to start with a rate of duty likely to arouse opposition. The Prussian electoral system is so arranged that the influence of wealth largely preponderates in the constitution of the Chamber of Deputies, and the rate of duty is not likely to be raised as long as that electoral system continues to exist. On the discussion of Miquel's tax, the imposition of a new death duty in its place was warmly advocated by many financial authorities, and it is, there-there, not impossible that at a future date the English example, which has been carefully studied by economic writers like Schaeffle, Wagner, and others, will be followed.

"As regards France, it is well known that a reorganisation of the system of taxation, and the introduction of some tax on capital or on income from invested funds, is among the most burning questions of the day. The present system by which the revenue is raised in France would not recommend itself to the British electorate.

"As regards countries like Brazil, Greece, Portugal, and Spain, it can hardly be suggested that they should serve as models of sound finance.

"One more word about the application of the comparative method to questions of revenue and taxation. This method may be useful as dis-

closing new sources of revenue or improved technical methods of assessment or collection, but the principles according to which the burden of taxation is to be divided among the several classes of the community are so closely connected with the general political system of a country, that it would require a very careful adjustment of all the co-efficients before the experiences of one country could serve as a lesson to the legislators of another country."

The Free Churches and the Law of Scotland.—The following note possesses a peculiar value as being from the pen of Professor A. Taylor Innes, the well-known author of *The Law of Creeds* :—

"The editors of the Journal desire a few lines of information on the issues involved in the great case now pending in the House of Lords, and it is natural to do so from the point of view of comparative jurisprudence. There is no country whose Courts have not had to decide questions as to property held in trust even for Free Churches. And the recent developments in Scottish Presbyterianism have had abundant contemporary precedents in England, in our own Colonies and in the United States, not to speak of the 'Reformed' Churches abroad. But such parallels come within the purview rather of the Privy Council, a tribunal which has occasionally found it possible to formulate a principle embracing them all. The House of Lords, on the other hand, is in this case acting strictly as the Supreme Court of the law of Scotland, and interpreting that law. But it does so from a height which of itself ensures a certain amplitude of view.

"For about a hundred years Scottish Presbytery split into fragments, themselves fissiparous. During the last century, notwithstanding a 'disruption' in the middle of it, the drift has been back towards union; and on October 31st, 1900, the two largest bodies outside the Establishment, the Free Church and the United Presbyterian Church, at last amalgamated their 1,700 congregations into one *United Free Church of Scotland*. The United Presbyterian Church was unanimous in union; but of the Free Church body twenty-five or twenty-seven ministers, followed by a part or whole of their respective congregations, and with sympathisers outside, protested, separated, and declared themselves to be the Free Church of Scotland. As such they bring two actions against the Church trustees: one, a test case, attacking the property of the Free Church congregations who have united (about forty times their own number); the other, attacking the property and central funds of the Church itself. In both cases there are trustees for the Free Church or its congregations. But in the case of the manses and churches throughout Scotland, the first purpose for which these are held in the trust deed is that they shall be used, occupied, and enjoyed by 'a congregation of the said body of Christians called the Free Church of Scotland, or of any *united body* of Christians composed of them, and such other body or bodies of Christians as the said Free Church of Scotland may at any time hereafter associate with themselves, under the foresaid name of the

Free Church of Scotland, or under *whatever name or designation they may assume.*'

"This strong clause was adopted by the Free Church soon after its birth in 1843, and it has been accepted in the Courts below in this action as conclusive in deeds where it is inserted, and as suggestive even with regard to a general church right to unite. But it was not repeated in the bank deposits and central investments, now amounting to more than a million of money, which the Church gradually accumulated for religious, educational, and missionary purposes. And the claim to these in another action by the same small minority was deliberately enquired into (though at last unanimously refused) in Scotland, and has had still more careful justice done to it in seven days' hearing in the House of Lords from November 26th to December 7th last. Incredulity has been expressed at the idea that a Church of a thousand congregations could be exposed a *second* time in one century to the loss of all its goods. But the first consideration is equal justice, especially to minorities; and it is to be noted that the minority in this case has already been stripped of all participation in the funds, and that while in words and in the first instance it demands the whole of the money, it asks alternatively for its own share *pro tanto—i.e.*, in some rough proportion of its members to the whole. And the grounds of action and of defence alike are of historical importance. In the Court of Appeal, indeed, very high theological questions as between Calvinism and Arminianism came unexpectedly to the front. This probably means, not that the Churches concerned are less Calvinistic than their neighbours in Scotland, but that an English Court is readily impressed with the undoubted convenience (to lawyers) of a creed remaining definite and unrevisable, while all Presbyterian Churches themselves have long since found it intolerable, as it is indeed contrary to their principles. But it does not follow, because a Church is entitled to modify, and even to lay aside altogether, a particular document, that it is therefore entitled to get rid of all its *contents*. Some of these may be fundamental to the Church, apart from this particular expression of them. And the main contention of the appellants in this action is that 'the duty of the recognition of religion by the State by means of establishment, and, where possible, endowment,' was originally an essential principle of the Free Church, and therefore could not be dropped or made an open question, as in this and other unions it is. Lord Low, the single judge before whom it at first came, held this was not an essential Free Church principle originally. The 'Second Division,' which reviewed the decision, held unanimously that even if the Church held this originally, its constitution provided for revision and change in such matters. The strength of the pursuers' case, however, came out more before the House of Lords than at any previous stage. And this threw back the respondents' counsel upon their further defences—the Dean of Faculty (Mr. Asher) dealing with the right of Free Presbyterian Churches to make legislative and constitutional changes, a

right exercised by their representative Assemblies, subject to a certain referendum; while Mr. Haldane (as reported) applied this rather to particular regions of doctrine, extreme presentations of Calvinism and compulsory principles in religion being the precise matters which have usually pressed for revision on both sides of the Atlantic. There is every prospect that the decision, when it comes, will be one of widespread and international interest."

Professor Maitland on the Year Books.—Professor Maitland is an ideal editor for the Year Books now being published by the Selden Society, and dull must he be of soul who can peruse the Introduction to vol. i. of the Year Books of Ed. II. without the keenest interest. After remarking how even the rudeness of the Norman-French is a guarantee of genuineness, Mr. Maitland goes on: "Law, however, is the great matter, and without much fear of contradiction we may affirm that if to the whole mass of materials for the history of law England had nothing to contribute but these Year Books, England's contribution would still be of inestimable value. A stage in the history of jurisprudence is here pictured for us, photographed for us, in minute detail. The parallel stage in the history of Roman law is represented, and can only be represented, by ingenious guesswork: acute and cautious it may be, but it is guesswork still. Our 'formulary system' as it stood and worked in the fourteenth century might be known so thoroughly that a modern lawyer who had studied it might give sound advice, even upon points of practice, to a hypothetical client. We can bring the tissue of ancient law under the microscope; the intimate processes of nutrition, assimilation, elimination can be recorded year by year. Often have we been told to seek in Roman law the clues that will guide us through the English maze. It is high time that the converse and complementary doctrine were preached, and it is safe to prophesy that some day a great expositor of Roman legal history will express his profound gratitude to the English Year Books.

"What has the whole world to put by their side? In 1500, in 1400, in 1300, English lawyers were systematically reporting what of interest was said in Court. Who else in Europe was trying to do the like—to get down on paper or parchment the shifting argument, the retort, the quip, the expletive? Can we, for example, hear what was really said at Constance or Basel, as we can hear what was really said at Westminster long years before the beginning of the 'conciliar age?' Suppose that our German cousins had law reports like ours, would not these *Jahrbücher* loom mightly big, not merely in the universal history of law, but in *Culturgeschichte*, the history of civilisation and civilising processes?"

And yet it is not so many years ago that these same Year Books were, as Sir Frederick Pollock puts it, "compendiously despised as 'black letter.'"

Native Law in Northern Nigeria.—The Chief Justice of North Nigeria

sends some notes of a conversation with Umoru, Alkali of Bida, on the subject of the law of divorce in force in the Emirate of Nupe: "A husband may divorce a wife for adultery. If a man ceases to care for a woman, he can break the marriage, but must pay her either her value or what he promised to pay when he married her. If he said nothing about the amount of payment at the time of marriage, she must go to the Alkali, who will then go to some one with sons and ask how much would one of the sons pay to marry her. The Alkali would then order that amount to be paid. A woman can 'break' the marriage if she says she has ceased to care for her husband. If the woman gives no reason, the husband can go to the Alkali and get an order from him that the wife is to repay her dowry. If a husband (*a*) starves his wife; (*b*) beats his wife; (*c*) does not have connection with his wife; (*d*) refuses to speak to his wife; she can 'break' the marriage and is under no liability to pay anything. If a woman is ordered to pay and says she cannot pay, the Alkali gives her five days in which to pay the money. If she comes back and says she cannot get the money, then the Alkali must, if he acts rightly, still 'break' the marriage. If a husband is ordered to pay and refuses, the Alkali puts him in prison until he pays. If the Alkali hears a husband has money in any place, he can send and have it seized and apply it in satisfaction of the order. If the husband has really not got the money to pay, the Alkali gives him time, even as long as ten years.

"Before breaking a marriage, a man or woman must go to the Alkali for him to try the case. If a husband or wife does not come to the Alkali before breaking a marriage, the Alkali does not force them to come before him, because God does not say so, but it is a bad thing. A husband charging adultery should, according to the strict law, produce four witnesses. The four witnesses must speak to having seen the adultery actually being committed and must speak to the same act. If any of the witnesses merely repeat what they have been told, the Alkali can order them to receive eighty strokes each. If the witnesses lie, they are liable to eighty strokes each. If four witnesses speak each to a separate act of adultery, the evidence is, according to the strict law, insufficient. The penalty for perjury in any proceeding in the Alkali's Court is eighty strokes. After a false witness has been beaten, he is taken to the market place and a crier calls out, 'This is a man who bears false witness.'

"The adulterer, if caught in the act by four witnesses, is to be taken to the Alkali, who, if he finds him guilty, orders him to be put into a pit and stoned to death. The Emir comes first and throws a stone, saying, 'You are cursed.' Then the Alkali comes and acts in a similar manner, and is followed by the whole town.

"That was the old law among the Fulani, but since their power has passed, it is no longer law. The white men do not allow killing, so money would always be taken now. As a matter of fact, the strict law has

never 'since the days of Mahommed' been enforced, because the strict requirements of the law as to four witnesses have never been complied with; for before the full penalty can be inflicted the four witnesses to the same act are essential. A man could have had the full penalty commuted even under the old law on payment of five hundred bags of cowries (£18), which on the intercession of the adulterer's family, the Alkali could reduce to two hundred and fifty.

"If there are only three witnesses or less, the adulterer is locked up for fifty days, his legs being chained, and he has to pay ten or five bags of cowries, according to his position. If a woman confesses to being pregnant by a man not her husband, names him and he confesses, the adulterer is liable to the full penalty—*e.g.*, death by stoning. But a man charged by a woman can always clear himself by denying the charge on the Koran.

"If a wife being pregnant is charged by her husband with adultery and denies the charge, the Alkali says to the husband, 'Take her back. A married woman cannot bear a bastard to her husband.' If a woman charged with adultery, whether pregnant or not, denies the accusation, each witness (where the full number of four is not produced) gets eighty strokes. This is because the woman knows what has happened."

International Law and the South American Republics.—Dr. Niemeyer draws attention in a recent number of the *Zeitschrift für Internationales Privat- und Öffentliches Recht* to the work, little noted in this country, of the latest Pan-American congress. Among its various labours has been the adoption of proposals for treaties dealing with a large part of international law. They are ten in all, and they relate to most diverse subjects. By far the most important is the proposed treaty as to the codification of public and private international law, Art. I. of which is to the following effect:—

"Le secretaire d'État des États-Unis et les Ministres des Républiques Americaines, accrédites à Washington, nommeront une commission de cinq jurisconsultes d'Amérique et deux Européens, de réputation établie, qui se chargera d'organiser, dans l'intervalle de l'a tuelle à la future Conférence, et dans le plus bref delai possible, un Code de Droit International Public, et un autre Code de Droit International Privé, qui régiront des relations entre les nations d'Amerique."

This project may not be completed, but the discussion which it will bring about will throw light upon the questions which have given rise to a so-called "South American International Law," and as to which the South American republics are inclined to take a line of their own.

"Widow": Mohammedan Marriages in Ceylon.—In a recent Ceylon case, for a report of which we are indebted to the Colonial Secretary of the Island, the point arose whether s. 523 of the Civil Procedure Code, giving preferential claim to administration to "widow," applied to the widow of a Mohammedan marriage. By the law of Ceylon Mohammedan marriages are recognised as valid; they have been so recognised, and the relict regarded as a

"widow," by a series of decisions from the year 1827 to the date of the Code, and of this practice the Legislature must have been aware when it passed the Code. Indeed, it is clear that the Legislature was aware, from the distinctions which, for certain purposes, are drawn in the Code itself between Mohammedan and Christian marriages. The Supreme Court had little difficulty therefore in deciding that, in the absence of anything to the contrary in the Ordinance, the relict of a Mohammedan marriage was a "widow." The judgment of Bonser C.J., in which he observed that "though a Mohammedan marriage was called by the same name as a monogamous marriage, yet in substance it is quite a different thing," had reference to quite another matter—the power of a wife under a Mohammedan marriage to dispose by Roman-Dutch law of her own property. And so of the remarks of Lord Penzance in *Hyde* v. *Hyde*, L.R. 1 P. & M. 130, and of Stirling J. in the *Baralonga* case, 57 L.J. Ch. at p. 486: they were addressed to the question whether the marriages in those cases, though valid according to the *lex loci*, could be recognised as valid according to the strict conception of Christian marriage in the law of England. In the Ceylon case, as Layard C.J. pointed out, the Court was not administering the law of England, but the statute law of Ceylon.

Divorce in Germany.—In the *Zeitschrift für Internationales Privat- und Öffentliches Recht* is the report of an intéresting decision by the Reichsgericht on the question whether German Courts can recognise as valid a decree of judicial separation of two foreign subjects, the German municipal law recognising only divorce, and their law recognising only separation. One of two Austrian subjects, husband and wife, lodged a petition for divorce in a German Court. It rejected the petition because the nationality of the parties was Austrian, and the Austrian law recognised only separation. The question then arose, Could the Court decree a separation? This depended chiefly on s. 17 of the Introduction to the Civil Code, which states that divorce (*Scheidung*) is regulated by the laws of the State to which the parties belong, and adds that there shall not be pronounced a decree of divorce or separation in virtue of a foreign law except when such a divorce would be valid according to German laws. When the question came before the Reichsgericht, the Court said: "Die Gesetze des fremden Staates, soweit sie zu einer Scheidung in deutschrechtlichen Sinne führen können, Anwendung finden sollen, nicht aber, dass auch andere Bestimmungen des ausländischen Rechts, die nicht auf eine Scheidung, sondern auf eine weitere, dem deutschen Recht nicht bekannte Rechtsinstitution Bezug haben, zur Anwendung zu bringen seien. Die Rechtssätze des internationalen Privatrechts sind nichts Sätze des Volkerrechts, sondern intergrierender Bestandtheil des betreffenden bürgerlichen Rechts." The Court decided that *Scheidung* in s. 17 meant "divorce." The main reasons were such as an English lawyer can readily understand—*e.g.*, that such is its meaning in the Civil Code itself, and in the first part of Art. 17. What

is less intelligible is the stress laid by the Court on the proposals contained in the draft or *Entwurf* of the Code; and what is even stranger, is that the action of the German delegates at the Hague Conference of 1894 on private international law should be discussed. There is much in the decision indicative of a widespread opinion that *séparation de corps* is not reconcilable with public policy.

State Aid to Theatres in Foreign Countries.—The Foreign Office has collected some interesting information as to the financial support given in foreign countries from State or municipal funds to dramatic, operatic, or musical performances. There is hardly a country, it would appear, in which such aid is not given in some form or another. France has, in Paris alone, four national theatres, which, in addition to occupying buildings rent free, receive by way of subsidy: the Opéra £32,000, the Opéra Comique £12,000, the Théâtre Français £9,600, the Odéon £4,000, subject to certain conditions. In the provinces popular concerts are also subsidised. In Germany, the Royal Prussian Opera House and Play House in Berlin receive £54,000 from the revenue of the Crown. In Italy, the La Scala at Milan receives £3,900 a year (for fifty performances), and the theatre at Naples £3,200. Portugal has two theatres in Lisbon belonging to the State. Sweden has its Theatre Royal at Stockholm, receiving about £3,330, and a Royal Academy of Music; Norway its national theatre at Christiania, receiving £1,111 a year. In Switzerland most of the cantons grant subsidies for music. Spain supports a "Conservatorio of Music and the Drama" at Madrid at a cost of about £7,300 a year. In Belgium, most of the large municipalities subsidise one or more theatres, and in many cases own them, the management being subject to strict regulations. The Opera House at Vienna was built out of State funds at a cost of more than half a million, and receives a subsidy of £24,000 a year. Hungary has four subsidised theatres. In Egypt, an annual subvention of £5,000 is given to the Société Artistique for sixty representations (thirty-six opera, twenty-four comedy) at Cairo and Alexandria. Athens keeps up the tradition of Pericles—*intervallo*—by a subsidy of £125 to £250 a year. Denmark and Russia are the two countries which take the subject most seriously. In Denmark, the Royal Theatre, Copenhagen, is under the management of the Ministry of Religion and Education, and the aim is to produce impartially the best dramatic works of ancient and modern authors and composers. Sad to relate, this elevation of aim results in an annual deficit of about £10,000. In Russia also the theatre is looked upon as an educational institution which ought to be within the reach of all. It is possible to enjoy the opera for 5*d.*, Russian plays for 3*d.*, and French and German plays for 9*d.* or 10*d.* To this end three Imperial theatres are supported by the Emperor at St. Petersburg, and three at Moscow, at a cost of £300,000. A sort of People's Palace—"Nazodny Dom"—is also maintained at St. Petersburg, Warsaw, and Kieff, under the direction of

the temperance societies, at a cost of £300,000 a year. Here in England the State—is it the shadow of Puritanism or the spirit of Liberty? leaves the theatre, educational or entertaining, to private enterprise; but who can say what the model municipality of the future may have in store for us?

"**Ignorantia Juris.**"—The presumption that every one knows the law has been the occasion of many cheap sarcasms at the expense of English law. The justification of the doctrine is to be found in the fact that general legal principles—and that is what *jus* here means, as Lord Westbury pointed out—are for the most part based on elementary moral principles; as Jessel M.R. rendered it: "It does not need to be a lawyer to be an honest man." The State has a right to credit every man with this modicum of morality, just as it has the right to credit him with an average amount of common sense—these are the tacit conditions on which he is received as a member of a civilised community. It is a corollary from this crediting with common sense that a man must be taken to intend the consequences of his acts. A case of *The King* v. *Charlier* in the *Rapports Judiciaires de Quebec* XII., Cour du Bank du Roi 385, is a good illustration of the application of this rule. A newspaper editor was charged with conspiring with another person to blackmail an insurance company by offering to abstain from publishing defamatory libels against it. While the proceedings were still pending, the editor published in his paper a series of articles on the case—articles which, in the opinion of the Court, constituted a flagrant contempt; then, when summoned before the Court, this ingenuous editor pleaded that he had no disrespectful or contemptuous design of reflecting on the proceedings or prejudicing the administration of justice. But this sort of disclaimer will not do; it was just what the law was designed to prevent, and the editor had—very properly—to go to prison. It is in this way that the law becomes a valuable educational force.

Railroad Amalgamation in the United States.—The Northern Pacific and Great Northern are two railroads having their eastern termini at the head of Lake Superior, and extending westward *viâ* Minneapolis and St. Paul to the Pacific Ocean, occasionally intersecting, but for the most part running side by side at an average distance of some hundred miles, and being the only competitors in the transportation of traffic in the district. In these circumstances the principal owners of the stock of the two lines conceived the idea of amalgamating them by an exchange of stock, and for this purpose a new corporation was constituted under the laws of New Jersey, with a capital of $400,000,000, to take over the stock of the two lines, the result being to merge the control of the two parallel and competing lines in the New Jersey corporation and eliminate competition. This transaction has been challenged as illegal under ss. 1 and 2 of the Anti-Trust Act, commonly known as Sherman's Act, 1890, by which (s. 1) "every contract, combination in the form of trust or

otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations," is declared illegal; and (s. 2) "every person who shall monopolise or attempt to monopolise or combine, or conspire with any other person or persons to monopolise any part of the trade or commerce among the several States or with foreign nations, is to be deemed guilty of a misdemeanour." These provisions are based on the assumption running through the United States Constitution that it is the free play of competition which secures the public against the tyranny of monopolies. If competing railway companies can by the simple device of a "holding corporation" and pooling earnings eliminate this same principle of competition, what is to prevent them fixing the rates at any figure they please? This is the gravamen of the charge eloquently expounded by Mr. Beck in his speech on behalf of the United States. But without disparagement to the force of the argument for competition, it is impossible to ignore the strong tendency to combination shown in modern industrial development and the legitimate advantages which flow from it in unity of control and economy of management: witness in England the absorption by the great joint stock banks of the private banking businesses, and their replacement by local branches. How are these two rival principles of competition and consolidation to be reconciled? This is the problem which the Supreme Court of the United States has to solve in the *Northern Securities* case.[1]

"**Res ipsa loquitur.**"—When a tile or chimney-pot comes tumbling down on our heads, we surmise a want of care somewhere, because in the ordinary course of repairing a roof or putting up chimney-pots these things ought not to descend into the street. This conclusion of the lay mind is known in law as the doctrine *res ipsa loquitur*—a doctrine laid down in *Scott* v. *London and St. Katherine Dock Company*, 3 H. & C. 596, and recognised in a number of subsequent English cases, of which the best known is *Byrne* v. *Boadle*, 33 L.J. Ex. 15. The doctrine has just been receiving a fresh illustration in a New South Wales case—*Hannah* v. *Dalgarno*, 3 State Rep. New South Wales 494. It was not on this occasion a case of a chimney-pot, but an overhead wire which broke and fell across a tramway trolley wire, became charged with electricity, upset a cab, killed the horse, and seriously injured the driver. There was really nothing to account for the breaking of the wire. It was alleged that a workman who was mending an adjacent wire laid his hand upon the wire that broke, but as the breaking strain was 455 lb. and the wire was nearly new, this scarcely afforded an explanation. The defendant could only say it was "inexplicable," but the Court, acting on the *res ipsa loquitur* rule, held that there was evidence of negligence to go to the jury, and refused to set aside a verdict of damages for the plaintiff. The rule, if not ideal justice, is a fair working rule for everyday life. It

[1] The Supreme Court of the United States has just affirmed, by five to four, the decision of the Federal Circuit Court of St. Paul.

raises a presumption which it lies on the defendant to displace. Chimney-pots do not fall, or telegraph wires snap, or cranes drop their burden, without a cause, and the defendant may fairly be expected to furnish an explanation which will exonerate him from any blame. A plea of ignorance is a plea of guilty.

The Law of the Lift.—Another New South Wales case—*McFerran* v. *Randle*—presents a pretty legal puzzle. The plaintiff was an electrician engaged to repair electric wires in a lift well on the defendant's premises—work which would take about half an hour to finish—and for that purpose he had to get on the roof of the cage. After he had been engaged for some ten or fifteen minutes some persons wishing to descend by the lift rang the bell above. The liftman, apparently considering that if he moved the lift he would interrupt the work which the plaintiff was doing, asked the plaintiff's leave to go up and bring the people down. The plaintiff took it upon himself to interpose, and said, "Let them wait a little." The ringing was repeated, and when again asked by the liftman, the plaintiff said, "All right, you can go, but mind you don't go to the top." The lift then ascended, and being carried to the top, the plaintiff was crushed and injured. On these facts the Supreme Court of New South Wales (*dubitante* G. B. Simpson J.) decided that the plaintiff had been properly non-suited. The duty on the defendants was that of taking proper care that the plaintiff was not injured whilst engaged in the performance of the work for which he was upon the defendant's premises, but no such duty arose where the plaintiff was upon a journey on his own account, voluntarily undertaken, and with which the defendants had nothing to do. The question is certainly a nice one. But can it be said that the defendants had nothing to do with the journey? It was their servant who was working the lift in the ordinary course of his employment, and the plaintiff was there with the sanction and by the direction of the defendants, and entitled *prima facie* to the rights of a licensee. No doubt he was in a position involving extra risk, and any right in respect of this extra risk the plaintiff by his consent to the journey must be deemed to have waived; but did the consent go further?—Did it exempt the defendants from the duty of ordinary care, and if not, would it not be a question for the jury whether the defendants had exercised ordinary care?

Stock Exchange Speculation and the Law.—*Étude historique et critique sur les Jeux de Bourse et Marches à Terme.* Par Em Vercamer. (Brussels: Bruylant-Christophe & Cie.; Paris: A. Maresq Aîné. 8vo, xv and 378 pp.) The author of this book—a judge of the Mixed Tribunal of Alexandria—is a keen advocate of legislative interference against the excesses of Stock Exchange speculation and time bargains in colonial produce, and in furtherance of his object discusses the law of the better known European countries and of the United States of America relating to this subject, with special reference to the position of parties to gaming contracts under modern statute

law and judicial decisions. A fuller notice will appear in the next number of the Journal.

Imprisonment for Debt in Roman-Dutch Law.—Mr. W. R. Bisschop contributes to the current *Law Quarterly Review* a learned and valuable article on "Roman-Dutch Law in South Africa." It is inspired by the new edition of H. Van Zyl's *Theory of the Judicial Practice of the Colony of the Cape of Good Hope, and of South Africa generally*; and the point which Mr. Bisschop presses is that legal procedure in South Africa is so interwoven with the common law of the country, that it would be impossible to replace the colonial by English rules of procedure without destroying to a large extent the common law itself. A good illustration is supplied by the remedy of arrest of the person or goods of a debtor in Roman-Dutch law, a remedy which grew out of the necessities of a trading community like Holland, where dealings were common with persons not domiciled in the country. Imprisonment for debt in the sense in which Fielding, Thackeray, and Dickens were familiar with it still obtains in Roman-Dutch law.

"A debtor," says Mr. Bisschop, "is liable in his goods for the payment of his debts, and—in the absence of any possessions—he is liable in his person. This maxim has been handed down from ancient times, and it was left to the nineteenth century to make an appreciable alteration in a survival from early civilisation. The 'civil imprisonment' of Roman-Dutch law, either for debt or *ad factum præstandum* (which, if valued in money, became also an imprisonment for debt), is still one of the remedies which a creditor can have in Holland and in Cape Colony for obtaining payment from his debtor after all other means have failed. The person concerned is put in prison, where he is kept at his creditor's expense. In Roman law the imprisonment was for an unlimited time, or until the debt was paid off; and this is still the case in Cape Colony, except in the case of debts of small amount, when a limit of three or six months is imposed. At the present time in Holland the limit is five years, or until the debtor reaches the age of seventy years. On the other hand, the *cessio bonorum*, which was abolished in the Cape by the Insolvent Ordinance of 1846, is still in force in the Netherlands, where at the present day civil imprisonment (*Gyzeling* or *Lyfsdwang*) can only be used in certain cases mentioned in the Code of Civil Procedure—*e.g.*, against foreigners, or in commercial matters, or matters which bear a commercial character, like the liability on a bill of exchange or promissory note. The measure is, as of old, applicable in both countries against women and men alike."

The Lady Barrister in Norway.—While the Inns of Court in England will have nothing to do with the lady candidate for the Bar, other sentiments prevail in Norway. From the letter of a Christiania correspondent in *The Cologne Gazette* to which Mr. E. J. Schuster calls our attention, it appears that on the discussion of the new Statute for the regulation of the advocates' profession an amendment, enabling women to be admitted to the profession

on the same conditions as men, was adopted with only three dissentient votes in the Lower House (Odelsting), and that the adoption of the amendment by the Upper House (Lagting) appears certain. Norway of all the nations seems to have solved the woman problem. There she takes her degrees and gives her vote on terms of perfect equality.

Torts in Legal Education.—Under the amended scheme of legal education at Oxford the subjects for the Honours School of Jurisprudence are: 1. General Jurisprudence; 2. Roman Law; 3. English Law: (i) Real Property; (ii) Contracts; (iii) Torts; (iv) Constitutional Law and Legal History; 4. International Law. What is noteworthy here is the introduction of torts as a new subject; it takes the place of "succession," hitherto deemed indispensable. The change is significant. It reflects the growing importance of the law of torts. Less than twenty years ago, in the preface to the first edition of his *Treatise on the Law of Torts*, Sir Frederick Pollock wrote: "The earliest text-book I have been able to find is a meagre and unthinking digest of *The Law of Actions on the Case for Torts and Wrongs*, published in 1720, remarkable chiefly for the depths of historical ignorance which it occasionally reveals. The really scientific treatment of principles begins only with the decisions of the last fifty years." Since then the subject has been maturing rapidly. In the recent cases on labour combinations and conspiracy we can see the law in the very process of making.

Judicial Separation in Roman-Dutch Law.—By the kindness of the Colonial Secretary, Colombo, we have received reports by Mr. Hermann A. Loos of several important cases recently decided in the Supreme Court of Ceylon. One of these deals with the jurisdiction under Roman-Dutch law to decree a judicial separation, and is specially interesting as exhibiting the approximation on this subject of the English and Roman-Dutch systems. Mr. Justice Middleton, in delivering the judgment of the Court, said:—

> As authorities on the Roman-Dutch law we have been referred by counsel for the appellant to Voet and Van Leeuwen, and by counsel for the respondent to Van der Linden and a German jurist named Leyser, the author of *Meditationes ad Pandectas*, published in 1772. Voet at s. 17, tit. 2, Book XXIV. says: "Plane, quemadmodum ob nimiam sævitiam atque duritiem conjugis in conjugem, aut rixas diffensionesque perpetuas, aut imminens alteri ab altero vitæ periculum, cohabitatio conjugum ad unius petitionem autoritate publica dirimi, adeoque separatio thori et mensæ fieri potest, manente interim illæso ipso matrimonii vinculo ac interdictis utrique aliis nuptiis."
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> Van Leeuwen (*Censura Forensis*, lib. i., cap. xv., ss. 17 and 18) says: "Quæ cum tantum sit separatio temporalis, sub perpetua spe reconciliationis intentata, facilius admittitur quam divortium, et ut plurimum decernitur ob utriusque vel alter utrius sævitiam, machinationem mortis, continuas rixas, et insidias. Eaque est communis omnium canonistarum opinio. Ut si propter nimiam sævitiam, aut mores intolerabiles, alteri conjugam trepidanti sufficiens securitas provideri non possit, quantum ad cohabitationem matrimonium dissolvatur."
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> Van der Linden, as translated and edited by Henry, says (p. 89): "Besides the

divorce there is also with us a kind of provisional separation introduced from the canon law termed a separation of bed, board, cohabitation, and goods. This can, no more than a divorce, be effected by the mere private agreement of the parties. Lawful reasons must be set forth in the application tending to show that the continuing to live together is dangerous, or at least insupportable."

There is a note, also presumably by the author, which indicates that such separations had been granted by the Courts for too trivial reasons, and an observation to the like effect of the great jurist Bynkershoek is quoted. Now I think it may be gathered at least from Van Leeuwen and Van der Linden that the fundamental basis of action on the part of canonists and Courts was the danger to life which would accrue if the cohabitation were not dissundered, and the parties ordered to live apart.

In Voet the grounds for separation are put disjunctively, and danger to life is an alternative ground to perpetual quarrels and dissensions, excessive cruelty and harshness.

In considering the grounds laid down by Voet and Van Leeuwen, a Court must of necessity lay down some gauge of the consequences accruing from these grounds which would justify its intervention.

We have been asked by counsel for the appellant to apply the English rulings as to cruelty in determining to what extent the reasons given in the Roman-Dutch authorities for granting separation must preponderate to permit the Courts here to act. On the other hand, counsel for the respondent has begged us to employ the more modern doctrines enunciated in the judgments of Lord Halsbury and the minority of the House of Lords in *Russell* v. *Russell* (App. Cases, 1897), and to hold practically that incompatibility of temper and disposition was sufficient ground on which to found a decree for separation under the Roman-Dutch law.

I cannot think that the Roman-Dutch law, apparently derived from the canonists, who looked upon marriage as an indissoluble sacrament, contemplated that even its less weighty reasons for separation, such as perpetual quarrels and dissensions and intolerable habits, should be construed as bearing the meaning contended for by the learned counsel for the respondent.

I incline to think their view must have been that expressed by Lord Stowell in *Evans* v. *Evans* (1 Haggard Consistory Reports), that in such matters it is the duty of the Courts to act strictly, and not to allow legally married persons to be separated merely on the ground that they cannot live together in harmony.

At the time when Voet and Van Leeuwen wrote, sensitiveness of disposition and neurotic tendencies had probably not reached the stage in human nature they have attained at the present age, and it is highly improbable that those jurists had them under consideration to any extent when enunciating the crude and simple grounds upon which they deemed the Courts had a right to act. There is no indication that they had in view what would merely wound the mental feelings, but rather actions accompanied by personal violence or the menace of it. No decisions in the Roman-Dutch law have been quoted to us to show that there has been any modification of ideas amongst the Dutch jurists founded on these reasons since their promulgation, and we are left as best we can to give a construction to them consistent with right reason and sound sense in the present day. It is true that counsel for the respondent referred to the German jurist Leyser, as modifying the original stricter notions of the canonists, but I am not sure of the weight of his authority. Leaning therefore, as I do, on the great authority and learning of Lord Stowell, I would hold that the excessive cruelty and harshness must from the display of personal violence or menace accompanying it at least be such as to give rise to reasonable apprehension that life, limb, or

health would be endangered to the complaining party if separation were not decreed. It may be said that in holding this I am practically enunciating what is the English law on the subject, but that law is, I have no doubt, derived from the same fount as the Roman-Dutch law, and my construction of the latter in accordance with the principles of an English jurist like Lord Stowell when there is no authority to the contrary is, I take leave to think, in harmony with the principles followed by the Courts of the Island and conformable to the interests of its inhabitants.

The Doctrine of "Læsio Enormis."—In an interesting collection of reports of decisions by the Supreme Court of British Guiana which has been forwarded to us by Mr. T. C. Rayner, Attorney-General of the Colony, is one in *Raleigh* v. *Jasmins* raising a point foreign to English law, but of importance in some systems. The decision turned on the doctrine of *læsio enormis* or exorbitant price. A dogcart worth about $50 had been sold for $100, and the purchaser asked for rescission. In some communities where the doctrine, as part of the Roman-Dutch law, once prevailed—for example, the Cape—it has been repealed. Swan Acting J. remarks in his judgment: "I have been unable to find any local instances of an action for rescission of contract on the ground of *læsio enormis*, nor have I, on the other hand, been able to discover anything to show that such actions may not be brought in the Courts of this Colony." He assumes that the law does exist, but decided for the defendant, because it seemed that the plaintiff bought with ample knowledge and with his eyes open. The doctrine is evidently the product of a time when commerce was in its infancy, and it is an interesting speculation how far its continuance could be compatible with modern conditions of trade. That differences may exist in the law of sale in communities with commerce highly developed is shown by the law as to breach of warranty. Since *Street* v. *Blay* (2 B. and Ad. 456) it has been well settled in England that such breach does not necessarily entitle the buyer to return the goods and claim rescission. In some American States the contrary has been held.

Notes on Legal Administration in the United States.—The following observations of Mr. T. Bridgewater, of the English Bar, made during a tour in the United States, show that the New World is not without its lessons for the old as to legal administration:—

"*Courts of Justice.*—There are still many variations both as regards the construction and arrangements of the Courts of Law as buildings, and the practice of the law and customs and manners within the courts themselves of many countries, that might well be considered, if not copied, for the improvement of the judicial administration of this country. The State Court-House of Boston for civil and criminal cases, the City Criminal Courts of New York, and the Hall of Justice in San Francisco for criminal cases are buildings large, airy, well lighted and ventilated, stone built, imposing and stately edifices, especially their interiors. The civil courts are often

wanting in dignity of location, scattered about the city and relegated to the summit of gigantic trading and office structures reached by elevators.

"*Interior Arrangements.*—Many of the interior arrangements of these three great court-houses might well be considered in the now new building of the Central Criminal Courts of London, and for the ultimate and necessary reconstruction of our great High Court of Justice in London, which for internal arrangement and discomfort remains condemned before the palaces of justice of the Continent, the High Courts, and even many of the native State Courts of India, of the Colonies, and of the United States.

"*Novel Prison Arrangements.*—The Hall of Justice in San Francisco is remarkable for an important experiment in the building of criminal courts, which has given so much satisfaction that it has been copied already in other western cities of the United States, and might well be considered by future builders and architects of all new assize courts. The cells, waiting-rooms, lavatories, kitchens, offices, and every other arrangement for the care and custody of persons awaiting trial have been relegated to the highest floor of the building. This is an entire and most pleasing reversal of the old familiar—still little more than a dark dungeon-like—system, down below in the basement of most of the assize courts of this country, notwithstanding the efforts, some years ago, of the Senior Judge of the High Court (the Hon. Mr. Justice Wills). Prisoners, instead of, according to the familiar call of the warders, 'coming up,' come down in elevators to the floor where the court is in which they are to be tried. The experience of being elevated up in a lift to the highest and best-lighted floor to find iron gates and latchets opened for those who have business within prison walls is as satisfactory as novel.

"*Arrangements of the Courts.*—The courts themselves, entered by wide double doors, are large, airy, and spacious, more like large square rooms, well warmed and well lighted by large windows and electricity—every seat a chair; no awkwardly placed steps; no crowding or standing in court. Every one must be seated, and no newspapers are permitted to be read; a court officer in uniform on one side of the court, with the jury sworn, and another officer on the opposite side with a jury in waiting. The judge's seat, the court officers', the juries', the clerk of the court's seats, and the witnesses' stand are the only raised parts of the court, and these by only a step or two; the whole floor covered with soft rubber material. A short-hand writer or stenographer to each court, generally a lady, and the reporters for the Press are more often ladies than men.

"*Juries* in all cases, and especially in criminal cases, look distinctly superior to English common or criminal juries, and much the same may be said as to the court officials likewise. Juries are never allowed to consider their verdicts in the jury box, and always retire to find their verdicts, and never, except when acquitting a defendant at the suggestion of the judge, find their verdict from the jury seat.

"*Judges' Summing-up.*—Great dignity is given to the summing-up of the judge. The jury always stand while receiving the judge's address, and the judge stands likewise, while so charging the jury. This is made even more impressive by all the doors being closed and no one being allowed to enter the court; should even a lawyer do so, or even the district attorney prosecuting in the case, he is likely to be rebuked by the judge for discourtesy.

"*Customs and Manners during Conduct of a Trial.*—It is questionable taste, although it would seem to be almost the invariable custom and practice in the administration of criminal justice in the English courts, to call a person charged with an offence 'the prisoner,' or 'the prisoner at the Bar'; in the courts of the United States it is an offence to do so. No judge, lawyer, or person is allowed to refer to a defendant as the 'prisoner,' who is invariably called the 'defendant,' and is courteously considered a plain citizen under detention until found guilty, occupying a seat at a table by the side of his counsel, and walking along the floor to the seat allotted, instead of coming up through a hole in the floor.

"*Advocacy.*—Probably in no English-speaking country in the world is the style of advocacy so varied as in America, for in any court at any moment may be heard some advocate who has never appeared in any court before against some constantly employed district attorney. This has one effect upon the judges of a very desirable kind, the observance of patience and courtesy to all who appear as advocates. Witnesses are never taken out of the hand of an advocate, and the judges abstain from examining and cross-examining witnesses, merely ruling whether a question is a proper one to put.

"*Prisoners Defended.*—There is never any unseemly dialogue between judge and defendant on trial, for every defendant (in nearly every State) must be defended by an advocate, and generally gratuitously, upon the principle that he (the advocate) is an officer of the Court, and assumed these duties when so appointed. Some States provide compensation for those who defend. The City of New York recognises the services of a lawyer who defends in a murder charge by sending him a fee of £100 from the city; this seems a noble offering to a man who has done his best to wipe out a great stain from a great city. The gratuitous defence of prisoners, so generally adopted in America, is a kindly and dignified act, and redounds to the credit of the American Bar, and must bring them, as a body, an immense amount of respect, not only in their own country, but out of it, for a large proportion of crime in America is committed by persons of foreign nationality. The defence of poor prisoners advocated by most of the great English jurists, from Jeremy Bentham downwards, was dealt with in an article in this Journal (July 1899, vol. i., N.S., No. 2). That article showed how large a proportion of the countries of the world exercised this principle of humane justice, and that this country, possessing

as it does one of the largest and most highly gifted Bars in the world, was in an exceptional position. The comments of the daily and periodical press at the time of that article, and since, were entirely favourable to the suggestion that poor and undefended prisoners should be and ought to be defended The discussion of the subject culminated in an Act of Parliament known as the Defence of (Poor) Prisoners, 1903.

"*Probation Laws.*—The State of Massachusetts, which was almost the only State where a system for the defence of prisoners did not prevail, has during the last year recognised the importance of some intermediary between the prosecution and the defendant, by passing a law giving power to the judges of both superior and inferior Courts to appoint probation officers, male or female (the latter to investigate the cases of all women charged with crime). These officers are not to be members of the police force, but are to enquire into the nature of every criminal case brought before the Courts under the appointment of which the probation officer acts, and may recommend to the Court that any person convicted there may be placed upon probation. These officers are to keep full records of all cases investigated by them, of all cases placed in their care by the Court, and of any other duties performed by them. The Court may place upon probation under any of its probation officers any person charged before it with crime. Each person released upon probation shall be furnished by the probation officer with a written statement of the terms and condition of his release. Powers are given to the justices to confer with the prison commissioners for securing any improvement in the probation service. Probation officers, police officers, and prison commissioners are to assist each other and to confer together from time to time to better promote the interests of their work. A prison commissioner is to preside over any such conference, and the prison commissioner shall annually report to the Governor of the State upon the operation of the probation system and its results, and recommend improvements for the service.

"The object of this new law, which is said to be working satisfactorily, is no doubt to bring before the Court all the surrounding circumstances of the former life, physical health, family history, mental capacity, and all that can be said in favour of a person charged—all those very facts which are daily and hourly sought for by many of our English judges and magistrates, and which are often only obtainable from those whose duty and office it is to bring to conviction the person charged.

"*Evidence of the Accused.*—There seems to be no State in the United States where persons accused do not give evidence, and no comment is made if they do not.

"*Sentences on Conviction.*—Sentences are never if possible given upon the same day as the verdict of the jury is given. A special day in the week is almost always fixed for sentence to be given."

Comité de Législation Etrangère.—We have received by the kindness

of this Society two large volumes, each of great interest. One is a treatise by M. Gourd on the Constitution of the United States, a notice of which by Mr. Bryce will be found on pp. 488-90; the other is a catalogue of the library of the Society—a library which our English Society may well envy. Not the least remarkable feature of this library is its rapid growth. In 1879 it contained 1,600 works of 5,000 volumes; to-day it has 8,116 works in 40,000 volumes. The mere arrangement is an education in jurisprudence, historical and analytic. Meanwhile, thanks to the generosity of the Colonies, the United States, and foreign countries, our Society's library progresses steadily if slowly. From St. Lucia we have received the Laws of St. Lucia, 1889, the Civil Code of St. Lucia, 1879, and the Code of Civil Procedure of St. Lucia, 1881; from the Bahamas, the Consolidated Laws of the Bahamas; law reports from Quebec and Canada (Exchequer Reports), from New South Wales, Natal, British Guiana, Colombo, and the Straits Settlements; also *The Bombay Reporter* and *The Punjab Law Reporter*; from the Secretary of State of the State of New York, the Laws of New York in two large volumes; from the State Library, Albany, the Annual Bulletin of Legislation, with comparative summary and index; from the Legislation Department of India, the Punjab and North-West Code, the Digest of Indian Law Cases; from Rome, the Bollettino di Legislazione Comparato, and many others, for all which the editors take this opportunity of expressing their cordial thanks to the senders.

Smoking by Juveniles.—In view of possible legislation on this subject by the Imperial Parliament, it may be useful to call attention to what has already been done in some of our Colonies and in the United States. In 1900 Tasmania passed an Act visiting with penalties any person under thirteen who smokes tobacco in any form in a public place, and any tobacconist who supplies such person with tobacco. An Act of Prince Edward Island (1901) forbids the sale of tobacco in any form to a minor under sixteen years of age, and any minor under that age who has in his possession or smokes tobacco is liable to a fine of five dollars or seven days' imprisonment. An Act of Bermuda of the same year imposes a penalty on persons selling tobacco, cigars, or cigarettes to children under sixteen years of age. Shopkeepers are made liable for permitting breaches of the Act by their employees; but it is a sufficient defence to a charge under the Act for the defendant to prove that he had reasonable cause to believe that the person to whom the goods were sold was sixteen years of age. An Act of British Columbia, 1902, prohibits tobacco being sold to youths under sixteen, and the use of it in the streets by youths of that age. Newfoundland also, by an Act of the same year, prohibits the sale of tobacco to juveniles apparently under fifteen years of age. It also provides for the punishment of persons acting as agents to procure tobacco for juveniles, and for the punishment of juveniles refusing to account for tobacco found in their possession. In the United States the effort to discourage cigarette smoking by the young has

found expression in laws in a number of States. In Massachusetts, Oklahoma, Pennsylvania, Tennessee, Vermont, Washington, and West Virginia the selling or giving of cigarettes or cigarette papers to a minor is made a misdemeanour. In Pennsylvania the offence extends to tobacco in any form, in Tennessee to bringing cigarettes into the State, and in Washington it is unlawful for a minor to smoke. Here, then, are ample precedents for legislative action. One need not subscribe to the extravagances of King James's "Counterblast against Tobacco" to recognise that juvenile smoking is a growing evil for which some check must be found.

Notes of Some Recent Decisions of the Supreme Court of Mauritius.—We have received from Wood-Renton J., chairman of the local branch of the Society in Mauritius, the following notes as to the recent decisions of the Supreme Court:—

Merchant Shipping Act, 1894.—Emigrant ship; coasting trade (*Procureur-General* v. *Rault.* Judgment, February 2nd, 1903).

Held that—

(i) It is sufficient to make a vessel an "emigrant ship," within the meaning of s. 289 of the Merchant Shipping Act, 1894, if she is, in fact, "carrying" more than the prescribed number of steerage passengers at any time, upon "any voyage" to which the section applies.

(ii) The term "coasting trade" in the Customs Ordinance, 1892 (No. 28 of 1892), Arts. 87-94, includes "the carriage of all sorts of goods carried coast-wise"; and if goods are so carried, it makes no difference in the result, although both they and the vessel carrying them belong to one and the same person.

(iii) An outward and homeward voyage under the above-mentioned articles must be regarded as a visit.

Authorities considered: The Winestead, [1895] P. 170; *SS. "Carisbrick" Company* v. *London and Provincial Marine and General Insurance Co.*, [1902] 2 K.B. 681.

Chose Jugée.—Tacit renunciation of prescriptive right (*Samouilhan* v. *Flanagan.* Judgment, March 9th, 1902).

(i) The authority of *chose jugée*, under the Code Civil, attaches to judgments of *attribution* (cf. *Mariette* v. *Adeline*, Dalloz, 1847, i. 45; *Vaguet* v. *Lambert et Quesne*, Dalloz, 1849, i. 131; *Boissière* v. *Pelletier-Mary*, Dalloz, 1851, i. 293; *Jacquements, Consorts de L——*, Sirey, 1902, i. 353).

(ii) The acts from which a tacit renunciation of a prescriptive right may be inferred must, as in the case of a tacit renunciation of a succession, be acts pointing necessarily and inevitably to the conclusion which the Court is asked to draw. Tacit renunciation is never presumed, and its existence cannot be affirmed on a mere balance of probabilities (cf. Laurent, *Principes*, vol. 32, pp. 197-9).

Servitude.—Modification of right of passage; whether account may be

taken of general interests of agriculture (*D'Argent Des Vaux & Co.* v. *La Compagnie Sucrière de Valetta.* Judgment, March 31st, 1902).

A servient owner is prohibited from doing any act that tends to diminish or to render less commodious the right which the dominant owner enjoys. A servient owner who applies to the Court for relief (*vide* Art. 701 of the Civil Code) from a right of passage which is alleged to have become unduly burdensome, cannot pray in aid of his claim the general interests of agriculture if, in consequence of the proposed modification of the servitude, there will be such an interference with the position of the dominant owner as to diminish sensibly the enjoyment of his right.

Authorities considered: Laurent, *Principes*, vol. 8, pars. 267, 268, 275; Demolombe, *Servitudes*, vol. 2, p. 455; *Petit* v. *Faure*, Dalloz, 1874, i. 14; *Goyet* v. *Société Diederichs*, Dalloz, 1898, ii. 413.

Municipal Corporation.—Disqualification of councillor by interest in contract with corporation; Art. 19 of Municipality Ordinance (No. 21 of 1851); *Mandataire-Adjudicataire*; Code Civil, Art. 1596 (*D'Espaignet* v. *Mayor and Municipality of Port Louis.* Judgment, April 7th, 1903). Motion for injunction to restrain defendants from acting on a resolution by the municipal council of Port Louis to purchase an immovable property which belonged to the wife of B., a municipal councillor, but which under the marriage contract of the parties was subject to the law of community, and in which B. was therefore directly interested. The resolution in question was carried by the vote of B. Under his marriage contract, B. had his wife's authority to sell the property.

Held by the majority of the Court (Sir Victor Delafaye C.J. and Didier St. Amand J.; Wood Renton J. dissenting) that under Art. 19 of the Municipality Ordinance, 1851 (No. 21 of 1851), which prohibits a municipal councillor from acting as such "during the subsistence" of any "contract" with the corporation in which he is "directly interested," a municipal councillor is disqualified for taking part in the formation of any such contract, and that, consequently, although the contract was not completed at the time of B.'s vote, the statutory disqualification attached, his vote was invalid, and a writ of injunction must issue.

Held unanimously that, although B. might be regarded, in virtue of the authority to sell, in his marriage contract, as his wife's *mandataire*, the case did not come within Art. 1596 of the Code Civil: "Ne peuvent se rendre *adjudicataires*, sous peine de nullité . . . les mandataires des biens qu'ils sont chargés de vendre."

Marine Insurance.—Constructive total loss; valued policy; clause fixing repair value for ascertainment of constructive total loss; "cost of repair"; deductions; time policy; plea of negligence on part of insurer; notice of abandonment (*Nairac* v. *Maritime Insurance Company.* Judgment, May 5th, 1902).

(1) There is a constructive total loss of a ship when, in consequence

of a peril insured against, she has been so damaged that a prudent owner, if uninsured, in view of the expenditure—estimated as at the date of the notice of abandonment—which the process would involve, would not repair her (*Young* v. *Turing*, 1841, 58 R.R. 484; *Irving* v. *Manning*, 1847, 14 L.C. 287; *Rankin* v. *Potter*, L.R. 6 Eng. and Ir. 83; *SS.* "*Blairmore*" v. *Macredie*, [1898] A.C. 593; *Martin* v. *Sidney Lloyd's Underwriting Association*, 71 L.J. Q.B. 718; *Beaver Line, Limited*, v. *London & Provincial, etc., Company*, *Shipping Gazette*, December 22nd, 1889, 71 L.J. Q.B. 718, 720; *Moss* v. *Smith*, 19 L.J. C.P. 225, distinguished; it was in emphasising the importance of the former element that the language was used which seemed to run counter to the "prudent uninsured owner" test).

(2) If the policy fixes the repair value of the ship, that value is binding on both insurer and insured, whatever the actual value may be (*Irving* v. *Manning*, *ubi sup.*; and Cp. *SS.* "*Balmoral*" *Company, Limited*, v. *Marten*, [1901] 2 K.B. 896; [1902] A.C. 511.

(3) If in addition to this the policy contains a special stipulation that the repair value so fixed is to be taken also as the measure of value for the purpose of ascertaining whether or not there has been a constructive total loss, this valuation clause is equally conclusive; and it is not competent for either party to impeach it by proving the existence of extrinsic circumstances, such as the nature of the particular trade in which the vessel was engaged, and alleging that these gave her a value different from that prescribed by the policy (Arnould, 7th ed.). It is the presence of this special valuation clause that excludes here the application of such cases as *Grainger* v. *Martin*, 1861, 31 L.J. Q.B. 186, where the peculiar character of the ship was taken account of.

(4) The term "cost of repair" means the cost of putting the vessel in as good and navigable a condition, due regard being had to the retention of classification (*Martin* v. *Sidney Lloyd's Martin & Underwriting Association*, 71 L.J. Q.B. 718, 720; and cf. "*Wild Rose*" v. *Jupe & Sons*, 1903).

In particular, the following elements may be considered: All preliminary expenses necessary for the ascertainment of the cost of repair (cf. *Mount* v. *Harrison*, 1827, 4 Bing. 388; *Doyle* v. *Dallas*, 1831, 1 Moo. & R. 48; *Gardner* v. *Salvador*, *ib.*, 116; and see Arnould, 7th ed.). Probable unseen damages (*Martin* v. *Sidney Lloyd's Underwriting Association*, Lowndes, 159). The value of the vessel as a wreck, on the balance of existing authority[1] (*Young* v. *Turing*, *ubi sup.*; *Irving* v. *Manning*, *ubi sup.*; *Rankin* v. *Potter*, L.R. 6 Eng. and Ir. 83; *SS.* "*Blairmore*" v. *Macredie*, [1898] A.C. 593); and no deduction is to be made in respect of old or decayed materials, provided that, but for the peril of the sea, insured against, and the consequent casualty, the state of such materials would not have been brought

[1] This decision was given prior to that of the Court of Appeal (Vaughan Williams L.J., *dubitante*) in *Angel* v. *Merchants' Marine Insurance Company*, [1903] 1 K.B. 811, in which *Young* v. *Turing* was disapproved of.

to light or prevented the vessel from being navigable (*Phillips* v. *Nairne*, 1847, 16 L.J. C.P. 194).

The cost, however, of equipment which never passed out of the possession of the insured, or of which, by the exercise of reasonable effort and care, he could have resumed possession, must be excluded (Lowndes, p. 165, pars. 153, 154; Arnould, 7th ed., ss. 1048, 1093).

(5) In the case of a time policy unseaworthiness or undermanning affords no protection to the insurer unless he can show that such defects resulted from negligence amounting to *dolus* on the part of the assured (*Gibson* v. *Small*, 1853, 4 H.L.C. 253; *Dudgeon* v. *Pembroke*, 1877, 2 A.C. 284; and cf. *Dixon* v. *Sadler*, 1839, 5 M. & W. 405 Ex.; *Sadler* v. *Dixon*, 1841, 8 M. & W. 895, Ex. Ch.; *Davidson* v. *Burnand*, 1868, L.R. 4 P.C. 117; *Trinder, Anderson & Company* v. *Thames & Mersey M.I.C.*, [1898] 2 Q.B. 114, where the master was part owner). Moreover, in the case of any policy of marine insurance, whether it be a time policy or a voyage policy, the *causa proxima* alone is regarded; and (see the judgment of Lord Herschell in *Wilson, Sons & Co.* v. *The Owners of the SS. "Xantho,"* 1887, A.C., at p. 510), "if that which immediately caused the loss was a peril of the sea, it matters not how it was induced, even if it were by the negligence of those navigating the vessel."

(6) Where there is constructive total loss of an insured vessel, the assured is only entitled to claim payment of the full amount covered by the policy if he has duly given notice of abandonment with reasonable diligence after the receipt of information of the loss (*Western Assurance Company of Toronto* v. *Poole*, 1903, 72 L.J. K.B., at p. 198): notice of abandonment may be given in any form, but it must clearly indicate an intention to abandon unconditionally to the insurer the insured interest in the subject of the policy.

(7) The effect of a notice of abandonment, assuming that a constructive total loss is established, is to vest in the insurer the property in the abandoned vessel as from the date of the casualty (MacArthur, 157); and consequently the assured is entitled to recover from the insurer all expenses reasonably and properly incurred by him in connection with her safe keeping and custody as from that date.

(8) An insured owner who sets up a successful case of constructive total loss is of course entitled to be reimbursed all expenses that can fairly be regarded as costs of litigation.

"*Réclamation d'Etat.*"—*Chose Jugée*; Code Civil, Art. 1351 (*Procureur-General* v. *Des Vaux*. Judgment, May 6th, 1903). A judgment dismissing an action of *réclamation d'état* brought by A. against B., his alleged father, justifies a plea of *chose jugée* as regards any subsequent proceedings in *réclamation d'état* by A. against B.'s wife or children (*Elie* v. *Salles*, Dalloz, 1866, i. 417; Sirey, 1866, i. 89, followed; and cf. *Estevenet* v. *Estevenet*, Dalloz, 1891, ii. 153).

Prerogative.—Right of Crown to be paid debt in preference to subject creditor of same degree; modes of barring of prerogative; conquered and settled colonies; "major" and "minor" prerogatives; Capitulation of 1810, and Treaty of Paris, 1814; treaty making powers of Crown; "full right and sovereignty": (*Colonial Government* v. *Widow Laborde and Others.* Judgment, August 22nd, 1902).[1]

The question at issue was whether the Crown was entitled, by virtue of its prerogative, to be paid a debt due to it by a contractor in preference to subject creditors of the same degree.

Held unanimously, following and applying *Exchange Bank of Canada* v. *Reg.*, 11. A.C. 157, as explained in *The Liquidator of the Maritime Bank of Canada* v. *Receiver-General of New Brunswick*, [1892] A.C. 438, that—

(1) The Crown is bound by the Civil Code as it exists in Mauritius.

(2) The Civil Code contains an exhaustive enumeration of priorities and privileges in regard to the payment of debts, and the Crown has only such priorities and privileges as it confers—*viz.* (see Art. 2098) those resulting from special laws relating to the Treasury.

(3) No such special law confers on the Crown any priority in regard to debts due to it by a contractor.

Held, also unanimously, that—

(1) The provision, in the Capitulation of 1810, ceding Mauritius to England, that the religion, laws, and customs of the inhabitants should be preserved, was not abrogated by the Treaty of Paris, 1814, either because that treaty was silent as to it, or because the treaty ceded the colony to England in "full right and sovereignty."

(2) An Imperial Statute is not the only mode in which a treaty may be barred.

Per Delafaye C. J. and Brown J.: the right of the Crown to be preferred to subject creditors of the same degree is a "minor" or "incidental" prerogative.

Stroud's "Judicial Dictionary."—Definition-giving, as George Eliot used to say of prophesying, is one of the most gratuitous forms of error—for ordinary persons, that is; but judges have to commit themselves to definitions, and when they do, practitioners cannot afford to be ignorant of their effect. That is the *raison d'être* of Mr. Stroud's work, which constitutes a valuable contribution to the science of the law. Ask what you will—what is a house, what is a carriage, what is a book, a horse, a ship, a street—we have an answer here. Perhaps we want to know how we may enjoy our leisure, and we find at once that a foot-race is a lawful game, so are dominoes and billiards, draughts and chess; even cards would seem not to be *per se* unlawful, and we sit down to our Bridge with a sigh of relief.

[1] This case does not come within the limits of time covered by the present half-yearly report; but a note of it has been included on account of its interest and importance.

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